United States Court of Appeals

for the Second Circuit

APPENDIX

76-7618

In The

United States Court of Appeals

For The Second Circuit

THE GOVERNMENT OF INDIA AND THE FOOD CORPORATION OF INDIA,

Plaintiffs-Appellants,

-against-

COOK INDUSTRIES, INC. AND COOK AND COMPANY,

Defendants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
JUN 10 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume II, pp. 225a-End

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JUDGMENT

SHUI FA OIL MILL CO LTD et al., - vs - COOK INDUSTRIES INC.,

73 CIV. 2[illegible]

DATE	PROCEEDINGS	Date Order Judgment E
Jan.16-73	Filed complaint & issued summons.	
Jan.24-73	Filed summons with marshal's ret. Served Cook Industries,Inc. by Mrs. Radice, on 1/18/73.	
.27,73	Filed Deft's Notice to Dismiss Complaint.	
May 23-73	Filed Notice of Motion ret. 5/31/73 at 9:30 AM re: stay.	
5-23-73	Filed memo endorsed on motion dated May 23,1973 to stay action pending arbitration. The Court having heard the parties and considered theirpapers,the motion herein for a stay pending arbitration is denied.So ordered, Stewart, J. m/n	
8-1-73	Filed memorandum of law in supppt of defts. motion to stay on reargument.	
8-7-73	Filed [illegible] order consolidating this action with 73-250 for all purposes under the following title: Shui Fa Oil Mill Co.,Ltd.,et al pltf. vs. M/S [illegible] Engines, etc. deft. and [illegible] Navigation Co.,Ltd. deft. & 3pty. pltf. vs. Cook Industries Inc. 3pty. deft.	
2-20-76	Filed OPINION #3908 (for Consolidated actions 73-250 and 73-251) The 2 actions were tried submitted to the Court on a stipulated record. Plaintiffs failing to offer any evidence of Austin's activities, have failed to meet their burden of showing that any of Austin's actions were a substantial cause of the loss. We find Austin is not liable to plaintiffs [illegible] to dismiss. Plaintiffs' complaint against Austin is dismissed. Austin's third party complaint against Cook is also dismissed. [illegible]	

[illegible]

JUDGE STEWART

COMPLAINT (Filed January 16, 1973)
(pp. 226a-229a)

73 Civ. 251

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES INC.,

Defendant.

COMPLAINT

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
JAN 16 11 21 AM '73

Plaintiffs, by their attorneys, BIGHAM ENGLAR JONES & HOUSTON, complaining of defendant, allege:

1. Plaintiffs are duly organized corporations with offices and places of business in Taiwan.

2. Defendant is a duly organized corporation with an office and place of business at 50 Broadway, New York, N. Y.

3. In January 1972 defendant contracted to sell various lots of No. 2 yellow soybeans to be shipped from Reserve, Louisiana, on the M/S "NORMA" on or about January 5, 1972 for delivery at Kaohsiung, Taiwan. A schedule of the shipments is attached hereto and marked Schedule "A".

4. On or about March 2, 1972 the M/S "NORMA" arrived at the port of "Kaohsiung" where the aforementioned shipments were delivered to plaintiffs in a short, slack and damaged condition.

5. Plaintiffs are unable to determine whether the defendant, or other defendants, to be named in a companion admiralty suit, are responsible for the failure to deliver the proper amount and quality of cargo contracted to be delivered.

6. Plaintiffs, prior to arrival of the cargo at destination, were the owners of the goods for value, and they bring this action on behalf of themselves and all others interested in said shipments as their interests may ultimately appear.

7. All conditions precedent required of plaintiffs and of all others interested in said shipment have been performed.

8. By reason of the premises, plaintiffs, and/or benefit parties, have sustained damage in the amount of $36,000.00, as nearly as the same can now be estimated, no part of which has been paid, although duly demanded.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $36,000.00 plus interest and costs and for such other and further relief as may be just.

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By _____
Daniel A. Sullivan
A Member of the Firm
Office & P. O. Address
99 John Street
New York, N. Y. 10038
REctor 2-4646

SCHEDULE "A"

B/L						
7	1,000	M/T	No. 2 yellow soybeans			Shui Fa Oil Mill Co. Ltd.
8	947.750	"	"	"	"	" " " " " "
4	400	"	"	"	"	Huey Feng Oil Mill Co. Ltd.
5	440	"	"	"	"	" " " " " "
11	707.250	"	"	"	"	Hui Shung Solvent Oil Co.
6	500	"	"	"	"	" " " " "
12	225	"	"	"	"	Hsie Cheng Oil Mill Corp.
13	300	"	"	"	"	" " " " "
15	1,675	"	"	"	"	Heng Lung Oil Mill Co. Ltd.
14	2,000	"	"	"	"	" " " " " "
16	1,300	"	"	"	"	Yuan Yi Oil Industry Co. Ltd.
17	1,325	"	"	"	"	" " " " " "
9	1,215	"	"	"	"	King Tai IH Oil Factory Co. Ltd.
10	1,200	"	"	"	"	" " " " " "
1	565	"	"	"	"	King Tai Yi Trading Co. Ltd.
2	400	"	"	"	"	" " " " " "
3	400	"	"	"	"	" " " " " "

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL A. SULLIVAN, being duly sworn, deposes and says:

That he is a member of the firm of BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiffs herein; that he has read the foregoing complaint; and that the same is true to the best of his knowledge, information and belief.

That the sources of deponent's information and the grounds for his belief as to all matters are documents relating to the matter in suit in possession of deponent's firm.

That the reason this verification is made by deponent and not by plaintiffs is that plaintiffs are corporations, none of whose officers are now within this District.

Daniel A. Sullivan

Sworn to before me this
15th day of January, 1973.

Stephen Gill

STEVEN H. MILLER
NOTARY PUBLIC, STATE OF NEW YORK
Qualified
Commission Expires March 30, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

----------X

ANSWER

73 Civ. 251

Judge Stewart

U.S. DISTRICT COURT S.D. OF N.Y. FILED Apr 27 2 38 PM '73

Defendant, by its attorneys, Hill, Rivkins, McGowan & Carey, answers the complaint herein on information and belief as follows:

FIRST: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph one.

SECOND: Admits the allegations in paragraph two.

THIRD: Denies the allegations contained in paragraph three except that defendant admits that the various lots of soybeans were in fact shipped from Reserve, Louisiana on or about January 5, 1972 as per Schedule A of the complaint.

FOURTH: Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs four through eight of the complaint.

FIRST DEFENSE

FIFTH: Defendant contracted to sell 14,000 metric tons of #2 yellow soybeans, plus or minus 5% per contract of sale dated November 1971, incorporated and

made a part hereof as Exhibit A, on terms of C & F buyer and governed by the form "IOSA-79" meaning "the Incorporated Oil Seed Association" form 79, Incorporated and made a part hereof as Exhibit B, the terms of which contract shifted the risk of loss to buyers upon delivery of the commodity in question to the ocean carrier.

SIXTH: Such deliveries were made as evidenced by bills of lading 1, 2 and 4-17 dated January 5, 1972 incorporated and made a part hereof as Exhibit C, and accepted without exception by the ocean carrier.

SECOND DEFENSE

SEVENTH: Form IOSA-79 calls for London arbitration in the event of the dispute between the parties with notice to be given by the party claiming arbitration within 21 days of ships reporting.

EIGHTH: Plaintiffs herein failed to give due notice of arbitration within the time called for by contract terms, thus prejudicing the defendant as to any third party remedies he may have had by virtue of the Carriage of Goods by Sea Act.

WHEREFORE, the defendant prays that the complaint be dismissed with costs and that it may have such other, further and different relief as to this court seems just and proper.

Dated: New York, New York
April 25, 1973

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Defendant
96 Fulton Street
New York, New York 10038
(212) 233-6171

Hill Rivkins McGowan & Carey

By _____
A Member of the Firm

TO: BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs
99 John Street
New York, New York

made a part hereof as Exhibit A, on terms of C & F buyer and governed by the form "IOSA-79" meaning "the Incorporated Oil Seed Association" form 79, Incorporated and made a part hereof as Exhibit B, the terms of which contract shifted the risk of loss to buyers upon delivery of the commodity in question to the ocean carrier. 232a

SIXTH: Such deliveries were made as evidenced by bills of lading 1, 2 and 4-17 dated January 5, 1972 incorporated and made a part hereof as Exhibit C, and accepted without exception by the ocean carrier.

SECOND DEFENSE

SEVENTH: Form IOSA-79 calls for London arbitration in the event of the dispute between the parties with notice to be given by the party claiming arbitration within 21 days of ships reporting.

EIGHTH: Plaintiffs herein failed to give due notice of arbitration within the time called for by contract terms, thus prejudicing the defendant as to any third party remedies he may have had by virtue of the Carriage of Goods by Sea Act.

WHEREFORE, the defendant prays that the complaint be dismissed with costs and that it may have such other, further and different relief as to this court seems just and proper.

Dated: New York, New York
April 25, 1973

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Defendant
96 Fulton Street
New York, New York 10038
(212) 233-6171

Hill Rivkins McGowan & Carey

TO: BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs
99 John Street
New York, New York

by _____
A Member of the Firm

MEMO ENDORSED

86204-FOB

NOTICE OF MOTION (Filed May 23, 1973) AND AFFIDAVIT OF F. O'BRIEN TO STAY ACTION PENDING ARBITRATION (pp. 233a-238a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED MAY 23 1973 S.D. OF N.Y.

----------x

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

----------x

NOTICE OF MOTION

73 Civ. 251

Judge Stewart

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of FRANCIS J. O'BRIEN and upon all the prior pleadings and proceedings herein, defendant will move this court before Judge Stewart in Room 506 of the United States Courthouse at Foley Square, New York, New York on the 31st day of May 1973 at 9:30 a.m. or soon thereafter as counsel can be heard for an order pursuant to Section 3 of the Federal Arbitration Act, Title 9 USCA § 3 staying the captioned action pending arbitration pursuant to the sales contract which is the subject matter of this action.

Dated: New York, New York
May 18, 1973

Yours etc.,

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Defendant
96 Fulton Street
New York, New York 10038
(212) 233-6171

TO:

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs
99 John Street
New York, New York

86204-FOB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

----------x

MOTION

73 Civ. 251

Judge Stewart

S I R S:

Defendant moves this court to enter, pursuant to Section 3 of the Federal Arbitration Act 9 USCA § 3 to stay the captioned proceedings pending arbitration of the issues which are the subject matter of this action.

This motion is based upon:

(a) the contract of sale dated November 19, 1971 attached to the answer herein as Exhibits A and B

(b) the annexed affidavit of Francis J. O'Brien.

Dated: New York, New York
May 22, 1973

Yours etc.,

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Defendant
96 Fulton Street
New York, New York 10038
(212) 233-6171

86204-FOB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

AFFIDAVIT

73 Civ. 251

Judge Stewart

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

FRANCIS J. O'BRIEN, being duly sworn, deposes and says:

1. That I am an attorney and member of the firm of Hill, Rivkins, McGowan & Carey, attorneys for defendant herein and make this affidavit on information and belief and upon documents in my files and in support of defendant's motion for a stay of the proceedings herein.

2. Defendant herein contracted with plaintiffs through the China Trade Development Corp. of Taipei, Taiwan on November 19, 1971 to sell 14,000 metric tons of #2 yellow soybeans on C & F Formosa terms of sale.

3. Such contract incorporated by reference the terms of the "IOSA-79", meaning the Incorporated Oil Seed Association form contract 79, which form contained a provision that all disputes were to be referred to London arbitration.

4. Plaintiff herein has brought this action and has neither called for arbitration nor appointed an arbitrator herein, in breach of the contract of sale which is the subject matter of this action.

WHEREFORE, defendant urges this court to stay the proceedings herein pending the arbitration of the issues.

FRANCIS J. O'BRIEN

Sworn to before me this
23 day of May, 1973.

Notary Public

DANIEL CAVALLERANO
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-5634490
Qualified in New York County
Commission Expires March 30, 1974

Index No. 73 Civ. 251

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

NOTICE OF MOTION

HILL, RIVKINS, McGOWAN & CAREY
Attorneys
for
Defendant
Office and Post Office Address
80 FULTON STREET
BOROUGH OF MANHATTAN, NEW YORK, N.Y. 10038
BE 3-6171

The Court having heard the parties and considered their papers, the motion is hereby granted for a stay pending arbitration as framed and so ordered

Charles E. Stewart
USDJ
July 31 1973

COPY RECEIVED
MAY 23 1978

BEST COPY AVAILABLE

238a

MEMO OF LAW BY F. O'BRIEN IN SUPPORT OF MOTION TO STAY ACTION (pp. 239a-242a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

* X

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO, LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

* *

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO STAY PROCEEDINGS

Preliminary Statement

This is a motion to stay the proceedings pursuant to the Federal Arbitration Act, Section 3 pending arbitration.

Facts

Cook Industries, Inc. defendant herein, entered into a contract of sale dated November 19, 1971 with the China Trade Development Corporation, which acted for plaintiffs herein, for the sale of 14,000 metric tons of #2 yellow soybeans.

Incorporated by reference into this contract was "IOSA-79" as the "governing contract". The provisions of IOSA-79 (meaning the Incorporated Oil Seed Association form contract number 79) included a London Arbitration Clause providing for the arbitration of any disputes arising under the contract to be held in London.

Cook delivered the requisite amount of soybeans to the M.V. NORMA in January of 1972, for which clean on board bills of lading were issued by the carrier. Cook first became aware of a dispute by a telex advice advising of shortage and damage although plaintiffs did not at this time call for arbitration.

Clause 1 of the Arbitration Clause of the contract provided:

> "Any dispute arising out of a contract embodying these rules shall be referred to arbitration in London, each party appointing one arbitrator, who shall be a member of the association, or a partner in a member's firm, or a director of a company represented by a member, and such arbitrator shall have the power if and when they disagree to appoint an umpire, who shall be a member of the association, or a partner in a member's firm, or a director of a company represented by a member, whose decision is to be final. No person having a direct interest in the matter and dispute shall be appointed to act as arbitrator or umpire except in disputes with regard to quality when both parties to this dispute give written agreement thereto prior to the arbitration being held".

The Law

Defendant brings on the instant motion to stay captioned proceedings pursuant to Section 3 of the Federal Arbitration Act (9 USCA 3) which provides as follows:

> "STAY OF PROCEEDINGS WHERE ISSUE THEREIN REFERABLE TO ARBITRATION
>
> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

Inasmuch as plaintiffs have alleged damage under the contract in the amount of $36,000.00, the dispute on the part of plaintiffs herein is clear.

Defendant herein has in no way defaulted in proceeding with the arbitration and is entitled by the terms of the contract to have this dispute settled according to the terms of that contract. The courts are in agreement that the fact that the contract calls for arbitration in a foreign country does not affect the

applicability of Section 3 of the Arbitration Act. See Kurt Orban Co. vs. S.S. Clymenia 318 Fed Supp 1387 (SDNY 1970), Saurer-Allma GMBH-Allgauer Maschinenbau 311 Fed Supp 68 (DCSC 1970) Mannesmann Rohrleitungsbau, GMBH vs. S.S. Bernhard Howaldt 254 Fed Supp 278 (SDNY 1965), Fox vs. The Giuseppe Mazzini 110 Fed Supp 212 (SDNY 1953), International Refugee Organization vs. Republic Steamship Corp. 93 Fed Supp 798 (DCMd 1950).

Conclusion

The court should stay the captioned proceedings pending the arbitration of the dispute in London, pursuant to the agreement of the parties.

Respectfully submitted,

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Defendant
96 Fulton Street
New York, New York 10038
233-6171

Of Counsel:
Francis J. O'Brien

REPLY MEMO OF LAW BY F. O'BRIEN IN SUPPORT OF MOTION TO STAY ACTION (pp. 243a-246a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

73 Civ. 251

C.E.S.

----------x

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO STAY

The motion now pending before this court was brought on by the defendant herein pursuant to an arbitration clause in a contract of sale which in part read as follows: "Notice of arbitration with name of arbitrator, to be given by party claiming arbitration within 21 days of ship's reporting. The other party to name and instruct his arbitrator within seven days from receipt of such notice".

The summons and complaint in this action were served on January 16, 1973, some ten months after the alleged shortage was discovered by the plaintiff. Defendant answered herein on April 25, 1973 raising as

of its defenses the arbitration clause upon which his motion is based.

Plaintiff now opposes the instant motion claiming defendant is in default of the arbitration clause and that the mere fact that defendant answered waived the right to arbitration.

POINT I

PLAINTIFF CANNOT STRIP DEFENDANT OF HIS RIGHT TO ARBITRATION BY DILATORY LAWSUITS.

It is clear that the plaintiff herein is the party claiming a dispute.

Defendant has been paid in full for the shipment in question and has no claim or cause of action against the plaintiff which requires invocation of the arbitration clause.

By plaintiff's reasoning herein, all that would be required under arbitration clauses which limit time to claim the arbitration, to vitiate those agreements, would be for the claimant to wait the required amount of time, present his claim, and resist arbitration on the grounds that the party claimed against

is in default of the clause when he pleads it as a defense.

The mere fact that the plaintiff made his claim known to the defendant does not impose upon the defendant of duty to proceed under the arbitration clause as it is clear that the clause is a last resort after settlement negotiations have failed.

POINT II

THE ANSWER BY DEFENDANT HEREIN TO THE COMPLAINT INCLUDED AS THE SECOND DEFENSE, THE ARBITRATION CLAUSE, AND AS SUCH WAIVED NOTHING.

Plaintiff cites the Galion Iron Works & Mfg. Co. v. J. D. Adams Mfg. Co. 128 F2d 411 in support of it contention that by the mere service of an answer, defendant waived it right to arbitration.

Plaintiff conveniently fails to note that the answer therein was based purely on the merits and contained no reference to or reliance on the arbitration clause.

When defendant herein served its answer, it raised all defenses it had to the action. Any counsel for a party who fails to do so would clearly be derelict in his duty to his client.

The courts of this day and age have said that "arbitration is desirable and should be encouraged" Oil Chemical & Atomic Workers Int'l. Union v. Southern Union Gas Co. 379 F2d 774 and that "Federal policy favors arbitration" Necchi S.P.A. v. Necchi Sewing Mach. Sales Corp. 348 F2d 693.

Yet, here we have the spectacle of plaintiff's Counsel arguing that alternative pleadings constitutes a waiver of one of the alternatives, a concept perhaps viable under the Rolls of Hammurabi but hardly today. Plaintiff has utterly failed to show how the defendant's alternative pleading has prejudiced plaintiff, a necessary element of waiver.

POINT III

THE MOTION FOR STAY SHOULD BE GRANTED.

Respectfully submitted,

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Defendant
Office & P.O. Address
96 Fulton Street
New York, New York 10038
233-6171

FRANCIS J. O'BRIEN
Of Counsel.

MEMO OF LAW BY F. O'BRIEN IN SUPPORT OF DEFENDANT'S MOTION TO STAY ON REARGUMENT (pp. 247a-253a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

----------x

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO STAY ON REARGUMENT

Preliminary Statement

On May 18, 1973 defendant made a motion to stay the captioned action pending London arbitration, pursuant to the written arbitration clause in the contract between the parties. On June 26th and July 23, 1973 oral arguments were heard and on the latter date, the court denied the motion without written opinion.

Defendant respectfully seeks reargument of the motion based on Judge Weinfeld's decision in Lowry & Co. vs. Le Moyne D'Iberville 253 F.Supp. 396 (SDNY

1966).

Facts

The pertinent facts of this case are not in dispute. On November 19, 1971 the parties entered into a written contract for the sale and purchase of 14,000 metric tons of soybeans. The contract contained the following arbitration clause:

"RULES-ARBITRATION

1. Any dispute arising out of a contract embodying these rules shall be referred to arbitration in London . . .

NOTICE OF ARBITRATION

23. Notice of arbitration with name of arbitrator, to be given by party claiming arbitration within 21 days of ship's reporting. The other party to name and instruct the arbitrator within seven days from receipt of such notice . . . ."

Pursuant to the terms of the contract, the soybean cargo was delivered to plaintiffs in Kaohsiung on March 2, 1972. Thereafter in May of 1972*, plaintiffs notified defendant of a claim under the contract and

*This was the first notice to defendant of any dispute under the contract.

on January 16, 1973 plaintiffs filed suit in this court. At no time have plaintiffs complied with the notice provision of the arbitration clause, in fact, plaintiffs have not to date demanded arbitration.

On April 25, 1973 defendant answered the complaint and raised the arbitration clause as a defense and on May 18th defendant moved to stay the suit pending arbitration.

Plaintiff argued against the stay claiming that defendant had failed to demand arbitration within the 21 day notice period contained in the arbitration clause and that this failure amounted to a waiver by defendant of the right to arbitration. On July 23, 1973 this court denied defendant's motion for a stay pending arbitration without written opinion.

Statute

Section 3 of the Federal Arbitration Act (9 USCA 3) provides as follows:

> "STAY OF PROCEEDINGS WHERE ISSUE THEREIN REFERABLE TO ARBITRATION
>
> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of

one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

The Law

A case on all fours with the instant dispute is Lowry & Co. vs. Le Moyne D'Iberville, (Supra.). In that case, an action was brought by the consignee against the carrier for cargo damage. The bills of lading purchased by the consignee included incorporation of a charterparty in which was contained a Centrocon arbitration clause which called for appointment of arbitrator within three months of final discharge.

The plaintiff in that case made an argument identical to the argument made by plaintiff herein, to wit that by defendant's failure to demand arbitration within the three month period provided for in the arbitration clause, it waived the right to arbitrate. Put another way, even though plaintiff, the party claiming a dispute failed to demand arbitration within the three month limitation period, that the defendant also failed to do so, and that the defendant had in fact waived its right to demand arbitration*.

*In the Lowry case, plaintiff notified defendant within the notice period whereas in this case plaintiff failed to notify within the period.

Judge Weinfeld held that while he doubted that a party to an arbitration agreement was under an affirmative duty to initiate arbitration proceedings when it was not asserting any claim, that the issue of waiver of this type was for the arbitrator and not the court to rule upon. The court stated at page 400 as follows:

> (8) Finally, libelant, relying upon Sucrest Corp. v. Chimo Shipping Ltd., 14 contends that respondent waived its right to arbitration when, aware of libelant's claim, it failed to demand arbitration within the three-month period provided in the centrocon clause, assuming arguendo that the clause governs. The contention, as the court understands it, is that even though libelant failed to follow up the assertion of its claim by demanding arbitration and appointing its arbitrator, nonetheless respondent was required to do so and unless it did, it was foreclosed from that remedy. Apart from this court's doubt that a party is under an obligation to initiate proceedings when it asserts no claim, our Court of Appeals has recently held that an issue of waiver, such as is here presented, is to be decided by arbitrators rather than by the court. Accordingly, the claim of waiver is also reserved for the arbitrators.
>
> The motion to stay the present action pending arbitration is granted.

In holding thusly the court cited World Brilliance Corp. vs. Bethlehem Steel Co., 342 F.2nd 362 (2nd Cir. 1965) wherein the Court of Appeals held that the issue of waiver of rights under the arbitration agreement was correctly left to the arbitrators to determine.

The courts make a distinction between a party waiving its right to arbitration by not demanding arbitration within time limits described in the arbitration agreement and a party actively participating in a litigation including a pre-trial discovery, before demanding arbitration. In the first category of cases, the courts hold that the waiver issue is for the arbitrators to determine while in the latter type of waiver, the courts may rule thereon.

The present case sets squarely into the first category since plaintiff claims defendant waived its right to arbitration by failure to make his demand for arbitration within 21 days of ship's reporting.* This is the type of waiver issue that the courts leave to the arbitrators to decide upon.

Conclusion

On the above cited authorities, it is respectfully requested that defendant's request for a reargument be granted and that the court grant defendant's motion to stay the action pending arbitration.

*Plaintiffs urge this position despite the fact that no notice was given to defendant of any claim until the time for notice of arbitration had long since expired.

Respectfully submitted,

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Defendant
96 Fulton Street
New York, New York 10038
233-6171

Of Counsel:
Francis J. O'Brien

THIRD PARTY COMPLAINT BY AUSTIN NAVIGATION CORP. LTD. AGAINST COOK INDUSTRIES, INC. (Filed July 18, 1973)
UNITED STATES DISTRICT COURT (pp. 254a-262a)

SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD.,
HUEY FENG OIL MILL CO. LTD.,
HUI SHUNG SOLVENT OIL CO.,
HSIE CHENG OIL MILL CORP.,
HENG LUNG OIL MILL CO. LTD.,
YUAN YI OIL INDUSTRY CO. LTD.,
KING TAI IH OIL FACTORY CO. LTD.
and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

MS "NORMA", her engines, boilers, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES, INC.,

Third-Party Defendant.

JUL 18 11 03 AM '73

THIRD-PARTY COMPLAINT

73 CIV. 250 (CES)

Defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., by its attorneys DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, for its Third-Party Complaint against the third-party defendant herein, respectfully shows to this Court and alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction and is an admiralty or maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure.

2. At all times hereinafter mentioned, third-party plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of Liberia, and was

the owner of the MS "NORMA".

3. At all times hereinafter mentioned, third-party defendant was and now is a corporation duly organized existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 50 Broadway, New York, N. Y.

4. That prior to the times mentioned in the Complaint, the MS "NORMA" was chartered to the third-party defendant, and at all times hereinafter mentioned and at the times mentioned in the Complaint, the said charter party dated at New York, December 16, 1971, was in full force and effect.

5. That under the provisions of said charter, the charterer was responsible to load, stow and discharge the cargo from the vessel.

6. That at all times mentioned in the Complaint, the whole reach of the vessel's holds, decks and usual places of loading were placed at the third-party defendant's disposal and under its control, and the loading, and discharging of the cargo referred to in the Complaint was under the control of the third-party defendant.

7. That on or about January 16, 1973 the plaintiffs herein filed a Complaint in this Court against the above-named defendant and third-party plaintiff. The Complaint alleges that certain shipments of yellow soybeans shipped on board the MS "NORMA" in January, 1972 at Louisiana were subsequently delivered at Kaohsiung, Taiwan. A copy of the Complaint is annexed hereto, marked Exhibit A.

8. Defendant and third-party plaintiff has performed all of the terms and conditions of the aforesaid charter party on its part to be performed.

AS AND FOR A SECOND CAUSE OF ACTION

9. Repeats and realleges each and every preceding Paragraph of this Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

10. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the breach of the provisions of the Charter Party on the part of the third-party defendant, its agents or servants.

11. That by reason of the aforesaid, if there should be any liability imposed upon the defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursements of this action, including attorneys' fees.

AS AND FOR A THIRD CAUSE OF ACTION

12. Repeats and realleges each and every preceding Paragraph of this Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

13. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the fault and neglect of, and was attributable to, the third-party defendant, its agents or servants, and not to the defendant and third-party plaintiff.

14. That by reason of the aforesaid, if there should be any liability imposed upon defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such

liability, together with the costs and disbursements of this action, including attorneys' fees, and if said defendant and third-party plaintiff is held responsible for the damages sustained by the plaintiffs herein, such liability will have been brought about and was caused wholly as a result of the primary and active negligence or fault of the third-party defendant, its agents or employees, without any fault on the part of defendant and third-party plaintiff contributing thereto.

WHEREFORE, defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., demands judgment against third-party defendant COOK INDUSTRIES, INC. for any sum that may be recovered against it, together with the costs and disbursements of this action, including attorneys' fees, and for such other further or different relief as to the Court may be just and proper.

Dated: New York, N. Y.
July 18, 1973.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA

Attorneys for Defendant and
Third-Party Plaintiff

BY: _____
A Member of the Firm

576 Fifth Avenue
New York, N. Y. 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

M/S "NORMA", her engines, boilers, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant.

1. This is a case of admiralty and maritime jurisdiction and is an admiralty claim within the meaning of Rule 9 (h). Plaintiff invokes the maritime procedures specified in Rule 9 (h).

2. Plaintiffs are duly organized foreign corporations with places of business in Taiwan.

Defendant, AUSTIN NAVIGATION CORP. LTD., is a duly organized corporation with an office and place of business at 25 Broadway, New York, N. Y.

3. During all the times mentioned herein the defendant, AUSTIN NAVIGATION CORP. LTD., was the owner and/or charterer and/or operator of the M/S "NORMA".

4. Upon information and belief the M/S "NORMA" is now, or during the pendency of this action will be, within this District.

5. On or about January 5, 1972 there were delivered to defendants at Reserve, Louisiana, certain shipments of yellow soybeans as described in a schedule annexed hereto and marked Schedule "A", in good order and condition for delivery to plaintiffs at Kaohsiung, Taiwan, in consideration of an agreed freight and pursuant to the valid terms of bills of lading issued on behalf of said defendants and the M/S "NORMA".

6. Upon information and belief the aforesaid goods were loaded aboard the M/S "NORMA" and upon arrival at destination were delivered in a damaged, short and slack condition.

7. Plaintiffs are unable to determine whether defendants or other defendants to be named in a companion civil action are responsible for the damage and shortage of said cargo.

8. Plaintiffs prior to the arrival of the vessel at destination were the owners of the goods and bills of lading for value and bring this action on behalf of themselves and all others interested in said shipments as their interest may ultimately appear.

9. All conditions precedent required of plaintiffs and of all others interested in said shipments have been performed.

10. By reason of the premises, plaintiffs, and/or benefit parties, have sustained damage in the sum of $36,000.00 as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

WHEREFORE, plaintiffs pray:

1. That the M/S "NORMA" be arrested;

2. That process issue against said defendants and that defendant, AUSTIN NAVIGATION CORP. LTD., be cited to appear and answer the allegations of the complaint;

3. That an interlocutory judgment be entered in favor of plaintiffs against the M/S "NORMA" and against the defendant, AUSTIN NAVIGATION CORP. LTD., directing that the plaintiffs recover their damages and that the M/S "NORMA" be condemned and sold and the proceeds of sale applied to the payment to plaintiffs of the sums found due them;

4. That the amount due plaintiffs be computed by further proceedings before a Commissioner pursuant to Rule 53 (b) and/or by further proceedings before the Court pursuant to Rule 42 (b);

5. That final judgment against defendants and the M/S "NORMA" be entered in favor of plaintiffs for the amount found due plaintiffs with interest and with costs;

6. That plaintiffs have such other and further relief as may be just.

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By _____
A Member of the Firm
Office & P. O. Address
99 John Street
New York, N. Y. 10038
REctor 2-4646

SCHEDULE "A"

B/L						
7	1,000	M/T	No. 2	yellow	soybeans	Shui Fa Oil Mill Co. Ltd.
8	947.750	"	"	"	"	" " " " " "
4	400	"	"	"	"	Huey Feng Oil Mill Co. Ltd.
5	440	"	"	"	"	" " " " " "
11	707.250	"	"	"	"	Hui Shung Solvent Oil Co.
6	600	"	"	"	"	" " " " "
12	225	"	"	"	"	Hsie Cheng Oil Mill Corp.
13	300	"	"	"	"	" " " " "
15	1,675	"	"	"	"	Heng Lung Oil Mill Co. Ltd.
14	2,000	"	"	"	"	" " " " " "
16	1,300	"	"	"	"	Yuan Yi Oil Industry Co. Ltd.
17	1,325	"	"	"	"	" " " " " "
9	1,215	"	"	"	"	King Tai IH Oil Factory Co. Ltd.
10	1,200	"	"	"	"	" " " " " "
1	565	"	"	"	"	King Tai Yi Trading Co. Ltd.
2	400	"	"	"	"	" " " " " "
3	400	"	"	"	"	" " " " " "

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL A. SULLIVAN, being duly sworn, deposes and says:

That he is a member of the firm of BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiffs herein; that he has read the foregoing complaint; and that the same is true to the best of his knowledge, information and belief.

That the sources of deponent's information and the grounds for his belief as to all matters are documents relating to the matter in suit in possession of deponent's firm.

That the reason this verification is made by deponent and not by plaintiffs is that plaintiffs are corporations, none of whose officers are now within this District.

Daniel A. Sullivan

Sworn to before me this
day of January, 1973.

[illegible]
[illegible] NEW YORK
[illegible]
[illegible] County
Commission Expires March 30, 1973

ANSWER BY DEFENDANT AUSTIN NAVIGATION CORP. LTD. TO COMPLAINT OF PLAINTIFF (Filed July 18, 1973) (pp. 263a-268a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

SHUI FA OIL MILL CO. LTD.,
HUEY FENG OIL MILL CO. LTD.,
HUI SHUNG SOLVENT OIL CO.,
HSIE CHENG OIL MILL CORP.,
HENG LUNG OIL MILL CO. LTD.,
YUAN YI OIL INDUSTRY CO. LTD.,
KING TAI IH OIL FACTORY CO. LTD.
and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

MS "NORMA", her engines, boilers, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant.

----------x

A N S W E R

73 CIV. 250 (CES)

Defendant, by its attorneys DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, for its Answer to the Complaint of the plaintiffs herein, respectfully shows to this Court and alleges upon information and belief as follows:

1. Admits the allegations contained in Paragraph 1 of the Complaint.

2. Admits that defendant AUSTIN NAVIGATION CORP., LTD. is a duly organized corporation with an office and place of business at 25 Broadway, New York, N. Y., but except as so specifically admitted, denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Complaint.

3. Admits that during all the times mentioned herein the defendant AUSTIN NAVIGATION CORP., LTD. was the owner

of the MS "NORMA", but except as so specifically admitted, denies the allegations contained in Paragraph 3 of the Complaint.

4. Denies the allegations contained in Paragraphs 4, 6, 7, 8 and 9 of the Complaint.

5. Admits that on or about January 5, 1972 there were delivered to defendants at Reserve, Louisiana, certain shipments of yellow soybeans for delivery at Kaohsiung, Taiwan, in consideration of an agreed freight and pursuant to the valid terms of the charter party dated New York, December 16, 1971 and the bills of lading issued thereunder, but except as so specifically admitted, denies the allegations contained in Paragraph 5 of the Complaint.

6. Admits demand and non-payment, but except as so specifically admitted, denies the allegations contained in Paragraph 10 of the Complaint.

FOR A FIRST, SEPARATE AND COMPLETE DEFENSE

7. Repeats and realleges each and every preceding Paragraph of this Answer to the Complaint with the same force and effect as if herein repeated and set forth at length.

8. The said shipments were transported on the said vessel and were discharged and delivered at the port of destination subject to the terms, conditions, limitations and exceptions of certain bills of lading, by which the shippers, owners, consignees and holders of said bills of lading agreed to be and are bound, and were subject also to the provisions of the United States Carriage of Goods by Sea Act, approved April 16, 1936. Any loss and/or injury and/or damage alleged to have been suffered by the shipments was due to a cause or causes for which the defendants are not liable or responsible by virtue of the

provisions of the United States Carriage of Goods by Sea Act and/or provisions of the said bills of lading and/or other applicable provisions of the contract of carriage or of law.

9. The said vessel was at all times seaworthy and, in any event, due diligence was exercised on the part of the carrier to make the vessel seaworthy and secure, and the said vessel was properly manned, equipped and supplied.

FOR A SECOND, SEPARATE AND COMPLETE DEFENSE

10. Repeats and realleges each and every preceding Paragraph of this Answer to the Complaint with the same force and effect as if herein repeated and set forth at length.

11. The United States Carriage of Goods by Sea Act provided in Section 1304 thereof, among other things, as follows:

> "(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from —
>
> (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
>
> * * * * * *
>
> (c) Perils, dangers, and accidents of the sea or other navigable waters;
>
> (d) Act of God:
>
> * * * * * *
>
> (i) Act or omission of the shipper or owner of the goods, his agent or representative;
>
> * * * * * *
>
> (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
>
> (n) Insufficiency of packing;
>
> * * * * * *
>
> (p) Latent defects not discoverable by due diligence; and
>
> (q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the

burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage."

FOR A THIRD, SEPARATE AND COMPLETE DEFENSE

12. Repeats and realleges each and every preceding Paragraph of this Answer to the Complaint with the same force and effect as if herein repeated and set forth at length.

13. The said shipments were transported on the said vessel and were discharged and delivered at the ports of destination pursuant to the terms, conditions, exceptions and liberties of a Charter Party dated at New York, December 16, 1971 entered into between Austin Navigation Corporation, Ltd., as owner and Cook Industries, Inc., as charterer, which Charter Party was incorporated by reference into certain bills of lading issued for the cargo in suit, by which the shippers, owners, consignees and holders of said bills of lading agreed to be and are bound. Any loss and/or injury and/or damage alleged to have been suffered by the shipments, as alleged in the Complaint, which is denied, was due to a cause or causes for which neither the defendant nor the vessel is liable or responsible by virtue of the provisions of the said Charter Party.

FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE

14. Repeats and realleges each and every preceding Paragraph of this Answer to the Complaint with the same force and effect as if herein repeated and set forth at length.

15. The aforesaid Charter Party, incorporated by reference in the bills of lading aforesaid, contained, among

others, an Arbitration Clause, reading as follows:

> "NEW YORK PRODUCE EXCHANGE ARBITRATION CLAUSE: Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

16. The matters alleged in the Complaint come within the scope of said Clause of the aforesaid Charter Party.

17. The defendant reserve its right to demand and compel arbitration of the disputes embraced in the Complaint.

FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE

18. Repeats and realleges each and every preceding Paragraph of this Answer to the Complaint with the same force and effect as if herein repeated and set forth at length.

19. The aforesaid Charter Party, incorporated by reference in the bills of lading aforesaid, contained, among other clauses, the following:

> "10. Cargo to be discharged by Receivers' stevedores free of risk and expense to the vessel . . ."

20. If any damage occurred to plaintiffs' cargo, which is denied, it resulted from the negligence and/or breach of duty by the plaintiffs as Receivers of the cargo and/or their stevedores, without any contributing fault on the part of the vessel, her Owner, or their servants, agents or employees.

21. As a result, the defendant is not liable for the damage alleged.

WHEREFORE, defendant prays that the Complaint herein be dismissed, together with the costs of this action, including reasonable counsel fees, and for such other, further or different relief as to this Court may seem just and proper.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA

Attorneys for Defendant

BY: _____
A Member of the Firm

576 Fifth Avenue
New York, N. Y. 10036

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LETTER FROM AUSTIN NAVIGATION CORP. LTD. RE: PRE-TRIAL CONFERENCE AND SHRINKAGE (pp. 269a-270a)

RECEIVED
CHAMBERS
JUDGE STEWAR
12/26/73

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA
Counsellors at Law
576 FIFTH AVENUE
NEW YORK, N.Y. 10036

LAWRENCE J. MAHONEY
ROBERT M. PELLEGRINO
ROBERT J. GIUFFRA
PETER J. ZAMBITO
ARTHUR IAN MILTZ
VINCENT J. BARRA

THOMAS M. DOUGHERTY
1944-1964

AREA CODE 212
TEL. 986-7100

CABLE ADDRESS:
DORYMAY

December 21, 1973

Bigham, Englar, Jones & Houston, Esqs.
99 John Street
New York, N. Y. 10038

Attention: Daniel A. Sullivan, Esq.

Hill, Rivkins, McGowan & Carey, Esqs.
96 Fulton Street
New York, N. Y. 10038

Attention: Frederick W. Meeker, Esq.

RE: SHUI FA OIL MILL CO., LTD.,
et al. v. MS "NORMA", etc.,
et al. - 73 CIV. 250 (CES)
Bigham, Englar's File J 9021
Hill, Rivkins' File 86024-FOR/FWM
Our File 5022

Dear Sirs:

On Wednesday, December 19, 1973, a pre-trial conference was scheduled before the Honorable Charles E. Stewart. Counsel for the plaintiff and for the vessel owner were present, and the Court was disturbed at the fact that counsel for Cook Industries was not in attendance.

A further conference has been set down for January 17, 1974 at 9:30 A.M., and it is expected that counsel for all the parties will be present at that time.

At the conference held on December 19th, the Court was informed of the meeting held between counsel at Messrs. Hill, Rivkins' office approximately two weeks ago. It was indicated also that counsel was pursuing information as to the normal shrinkage which could be expected having in mind the type of cargo involved, the length of the voyage, etc. If it could be developed that considerable shrinkage is common, this

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ham, Knfar, Jones & Houston, Esqs.
ill, Rivkins, McGowan & Carey, Esqs. 2022

ght reduce the damages to an area wherein it would be econ-
ically feasible to settle the matter.

The Court was informed also that the writer, as attorney for the vessel owner, had been requested to obtain further particulars as to the retention and payment of stevedores at the loading port and to secure the vessel's deck log. It was explained that the request had been made through the vessel's agents and the P & I representatives of its underwriters but that some time would be necessary in order to secure this data.

We trust that counsel will keep each other informed as to the further information being sought so that, if a disposition is possible, we may discuss same without delay, and that, failing a disposition, we can promptly move on to necessary discovery.

We wish to take this opportunity to extend to you our best wishes for the Christmas season and coming new year.

Sincerely,

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & STEWART

BY: Peter J. Laubisch

PJZ:MTW

cc./ Honorable Charles E. Stewart

NOTICE OF MOTION (Filed January 14, 1974) BY COOK INDUSTRIES, INC. AND AFFIDAVIT OF F. W. MEEKER TO DISMISS ACTION, WITH EXHIBITS
(pp. 271a-304a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.

-and-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

- X

73 Civ. 250 (CES)

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the affidavit of Frederick W. Meeker attached hereto and upon all prior pleadings and proceedings herein, the undersigned will move this court at the United States District Courthouse, Foley Square, New York, New York on February 13, 1974 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the cause of action of plaintiff Shui Fa Oil Mill et al. against Cook Industries Inc. and for an order dismissing the third party cause of action of Austin Navigation Corp. Ltd. against Cook Industries on the grounds that the defenses to both claims are based on documentary evidence and no substantial questions of law or fact are in issue.

Please take further notice that answering affidavit on this motion are to be served upon the undersigned at least 5 days before the return date of this motion.

Dated: New York, New York
January 7, 1974

Yours, etc.,

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Third-Party Defendant
96 Fulton Street
New York, New York 10038

TO: DOUGHERTY, RYAN, MAHONEY,
PELLEGRINO & GIUFFRA
Attorneys for Austin Navigation
Corp. Ltd.
576 Fifth Avenue
New York, New York 10036

TO: BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for Shui Fa Oil Mill
Co. Ltd., et al.,
99 John Street
New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al.,	:	
Plaintiffs,	:	
-against-	:	
M/S "NORMA', her engines, etc.	:	
-and-	:	
AUSTIN NAVIGATION CORP. LTD.,	:	73 Civ. 250 (CES)
Defendant and Third-Party Plaintiff,	:	AFFIDAVIT
-against-	:	
COOK INDUSTRIES INC.,	:	
Third-Party Defendant.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FREDERICK W. MEEKER, being duly sworn, deposes and says:

1. He is an attorney and counselor at law associated with Hill, Rivkins, McGowan & Carey, attorneys for third-party defendant, Cook Industries Inc., in the above-entitled action and that as such he is fully familiar with all of the records and proceedings in this action.

2. As more fully appears in the complaint by Shui Fa et al. against Cook and the third party complaint of Austin Navigation Corp. Ltd. against Cook, these consolidated actions were brought for breach of contract of

sale and for indemnification of Austin for liability to plaintiffs respectively.

3. The actions were commenced on January 16, 1973 by filing of a complaint by Shui Fa et al. against Austin and by filing of a complaint by Shui Fa against Cook. Thereafter defendant Austin filed and served third party complaint against Cook in the former action.

4. Issue was joined by Cook in both the actions and a motion was made by Cook to stay the action between Shui Fa and Cook pending arbitration, which motion is still pending at this time on reargument. Both actions have been consolidated before this court.

5. The third party complaint ~~attached hereto~~ alleges breach of a charter party between Austin as owners and Cook as charterers in that "the charterer was responsible to load, stow and discharge cargo from the vessel", that the vessel was placed at the disposal of the charterer and under its control for loading and stowing of the cargo.

6. The third party complaint further alleges breach of the charter party provisions in loading and stowing as a second cause of action, and negligence of the charterer in loading and stowing of the vessel as a third cause of action.

7. As can be seen by a reading of the charter party, the charterer was under no duty to load, stow or discharge the vessel by its terms and nowhere is it alleged that the charterer subsequently assumed these duties after the execution of the charter party.

8. As can be seen from the copies of the invoices from St. John Shipping Co., Inc., the stevedore herein, to

Gulf Coast Shipping, agent for Austin Navigation Corp. Ltd., the expenses of loading the vessel were borne by the third-party plaintiff.

9. Third-party defendant, Cook Industries Inc., neither contracted to load, stow and discharge the vessel Norma, nor did it at any time agree to be liable for the loading, stowing or discharging thereof, nor did it take part in any way in the loading and stowing other than to provide the cargo at a grain elevator for loading.

10. With respect to the complaint filed by Shui Fa against Cook, it is alleged that Cook breached the contract of sale on which the action is based in that it failed to deliver the proper quantity or quality of soybean product as contracted for.

11. The contract of sale herein specified that "Weights to Govern Loading Official", meaning that the weights delivered to the carrying vessel were to govern the amount payable to Cook and any net loss subsequent to loading was to be for the account of the receivers.

12. The contract of sale also specified that the "Grades to Govern Loading Official", meaning that any subsequent derogations in grade after loading were to be the responsibility of the receiver.

13. As can be seen by the weight certificates, issued at the time of loading, the vessel loaded the amounts of grain as reflected in the bill of lading as issued by the vessel and as reflected in the invoices billed to China Trade Development, the purchasing agent herein. If any

net loss or damage ensued thereafter, it is not the responsibility of Cook.

14. Plaintiffs purchased the cargo by means of a documentary sale i.e. paid according to the tenor of the bills of lading herein. The Third Party Defendant fully performed the contract of sale in that it delivered the required amount of 14,000 M/T +/- 5%. If any shortage was listed at outturn it is either the fault of the carrier for fraudulent bills of lading or the receiver for negligent discharge.

15. If any loss or damage occurred to the cargo which is the subject matter of this action, the loss or damage took place subsequent to the loading of the vessel at Reserve, Louisiana, for which Cook cannot be considered liable either by virtue of the contract of sale with China Trade Development or by the charter party with Austin Navigation.

Wherefore: Third-party defendant Cook demands that the complaint of Shui Fa et al. and the third-party complaint of Austin Navigation Corp. Ltd. be dismissed with costs.

Frederick W. Meeker

Sworn to before me this
day of January, 1974.

Notary Public

CATHERINE E. LARRAGHER
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-6370150
Qualified in Queens County
Certificate filed in New York County
Commission expires March 30, 1974

(See list of Exhibits attached)

APPROVED BALTIMORE BEXTH GRAIN CHARTER PARTY—STEAMER

EXHIBIT A

Charter Party dated December 16, 1971 between Austin Navigation Corporation Ltd. and Cook Industries Inc.

EXHIBIT B-1 through B-4

Invoices of St. John Shipping Co., Inc. to defendants or agents.

EXHIBIT C

Bill of sale between Cook Industries Inc. and China Trade Development Corporation.

EXHIBIT D-1 through D-8

Weight Certificates issued by Destrehan Board of Trade.

EXHIBIT E-1 through E-16

Bill of lading 4 14,700 M/T soy beans involved.

BALTIMORE BERTH GRAIN CHARTER PARTY—STANDARD

~~CHRONOPEROS, INC. BALTIMORE BERTH GRAIN CHARTER~~

CHRONOPEROS, INC.
40 WEST MAIN ST.
P.O. BOX 178
BABYLON, N.Y. 11702
C-1881
SHIP & CARGO BROKERS

New York, December 16, 1971

It is this day **Mutually Agreed**, BETWEEN AUSTIN NAVIGATION CORPORATION, LTD., Monrovia, Liberian Flag Steamship "NORMA", single-deck, self trimming bulkcarrier, cargo to be loaded in main holds only

Liberia, owners of the Steamship of 12027

18802 G.R.T. built 1949 at

~~net tons register, or thereabouts, and guaranteed (Qrs. of 480 lbs. of Heavy Grain 10 per cent more or less capacity and as~~ Qrs. of 480 lbs. of Oats

~~10 per cent more or less capacity, classed~~ Highest in Lloyds or equiv. now

and COOK INDUSTRIES, INC. Charterers.

That the said Steamship being tight, staunch and strong, and in every way fitted for the voyage, with liberty to take outward cargo to 1/2 safe berths, 1 safe port U.S. GULF, excluding Brownsville with New Orleans/Destrehan/Ama/Myrtle Grove/ Reserve counting as one port

for owners' benefit, shall with all convenient speed sail and proceed to

and there load, always afloat, from said Charterers, or their agents a full and complete cargo subject to limits allowed/suggested of WHEAT, SHELLED CORN, and ~~FEED~~ and OATS. 14,000 Metric Tons, 5% more or less, quantity at Owners' option, SOYBEANS in bulk, to be naturally separated by holds from any other cargo.

~~Quarantine not to be given within 24 hours after receipt of notice of arrival at port of call in the United States from ballast or before 10 o'clock A.M. if not discharged on the day on which~~ ~~steamer arrives, and if given within 24 hours after receipt of notice of arrival at port of call in the United States from ballast or before 10 o'clock A.M. if not discharged on the day on which steamer arrives, or if given on Saturday, vessel's orders shall be given before 10 o'clock A.M.~~ Vessel to load under inspection of Underwriters' Agents, at her expense and to comply with their rules, not ~~demurrage to be made, vessel to ask again for orders.~~ exceeding what she can reasonably stow and carry over and above her Cabin, Tackle, Apparel, Provisions, Fuel and Furniture, and being so loaded shall therewith proceed to

~~ANTWERP-AMSTERDAM-ROTTERDAM-LIVERPOOL-GLASGOW-BELFAST-DUBLIN-HULL-NEWCASTLE-LEITH-PLYMOUTH-SOUTHAMPTON-LONDON (excluding Fishery Docks) or AVONMOUTH (if ordered to a port in the Bristol Channel) (always afloat)~~ 1/2 safe berths, 1 safe port FORMOSA

~~of England Corn Trade Association).~~

having been

~~as Port or Ports as ordered on signing Bills of Lading, and deliver the same, agreeable to Bills of Lading, on being paid freight, in British Sterling or its equivalent, as follows:~~ ~~(all free of extra freight in Bills of Lading if ordered to Leaden).~~

SEVEN DOLLARS AND SEVENTY FIVE CENTS ($7.75) per ton of 2240 lbs.

~~all English weights delivered.~~

~~Charterers have the privilege of ordering vessel to~~

~~pieces per quarter more than the above rate.~~

~~in which case rate of freight shall be~~

Freight to be fully prepaid in New York, in U.S. Currency, on surrender of signed Ocean Bills of Lading, discountless and non-returnable, vessel and/or cargo lost or not lost, freight deemed earned as cargo is loaded aboard.

EXHIBIT 19

278a

NOTE: THIS CONTRACT IS SUBJECT TO RETROACTIVE BILLING, EFFECTIVE OCTOBER 1, 1971

or their agents'

Captain to call at Charterers' Office, as requested, and sign Bills of Lading as presented, without prejudice to this Charter Party, any deficiency to be paid at Port of Loading in cash, less insurance and any surplus over and above estimated freight to be settled there before the Vessel leaves the Custom House by Captain's draft on Charterers' London upon Consignee, payable five days after arrival at Port of Discharge.

~~Steamer to be employed by vessel to be approved by Charterers.~~

~~Steamer to be loaded according to berth terms, with customary berth despatch, and if detained longer than five days, Sundays and holidays excepted, Charterers to pay demurrage at the rate of forty pence (4d.) British Sterling or its equivalent per net register ton per day, or pro rata payable day by day, prorated such detention shall commence by default of Charterers or their agents.~~

~~Notification of the Vessel's readiness must be delivered at the office of the Charterers or their agents at or before 4 P.M. (or at or before 10 A.M. noon if on Saturday) Vessel also having been entered at the Custom House, accompanied by pass of the inspector of Vessel's readiness in all compartments, and the lay days will then commence at 1 P.M. on the next business day.~~

Time for loading, if required by Charterers, not to commence before the 23rd day of December 71

Should the Steamer not be passed by Board of Underwriters' Surveyor as ready for cargo at her Loading Port before 12 o'clock noon on the 31st day of December 1971, followed by the presentation of said Surveyor's pass to the Charterers or their agents at their office before said hour, the Charterers or their agents shall at said hour and at any time after not later than the presentation of the Surveyor's pass at said office, have the option of cancelling this Charter Party.

~~It is also mutually agreed that this contract shall be completed and be superseded by the signing of Bills of Lading on the same form as issued by regular steamers trading from port of loading to port of destination or, if port of destination be one to which there are no regular lines of steamers from loading port, this contract shall be superseded by the signing of Bills of Lading on the form customary for such voyages for grain cargoes, which Bills of Lading shall however contain the following clauses:~~

1. "It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause or wheresoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrest and restraint of Princes, rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by collisions, stranding or other accidents of navigation of whatsoever kind, (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the ship owner, not resulting however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager)." 1950 in New York !

2. "General Average shall be payable according to York/Antwerp Rules/Average adjusted with values declared therein to be signed, also security required to be given as required by master or agents. If the owner shall have exercised due diligence to make the steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence, the consignees or owners of the cargo shall nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from, or been occasioned by, faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness."

3. "It is also mutually agreed that this contract is subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled, 'An Act Relating to Navigation of Vessels, etc.'"

4. "Cargo to be received at destination as fast as vessel can deliver during ordinary working hours any custom of the port to the contrary notwithstanding; but receivers of the cargo are in no case obliged to take delivery at night without their consent, and in any event the steamer must bear all extra expenses incurred by working at night."

~~This clause to be expressly stipulated in all Bills of Lading except those for British Channel Ports.~~

5. ~~In the event of steamer being ordered to discharge in Scandinavia, The Sound, Baltic or Gulf of Finland or if ordered inside Gibraltar, Steamer to have the privilege of passing en route".~~

6. "Vessel to have a lien on the cargo for all freight, dead freight, demurrage or average."

Charterers' liability under this Charter to cease on cargo being shipped., except for freight, deadfreight and demurrage

The said Charterers, or their agents, are to have the privilege of transferring this Charter to others (guaranteeing to the ship owner the due fulfillment of this Charter).

Cash for Vessel's ordinary disbursements at Port of Loading to be advanced by Charterers, if required by Master, at current rate of exchange, subject to insurance and two and a half per cent commission.

A commission of 1-1/4% is due and payable on vessel being loaded to SPACEBROKERS, INC., ... and the Steamer's freight brokerage is due on signing of this Charter Party to ..... and 1-1/4% Address Commission to Charterers.

~~on gross freight, dead freight and demurrage. Vessel lost or not lost, whose agents at Port of Loading are to attend to ship's business on customary terms.~~

~~Penalty for non performance of this agreement, estimated amount of freight.~~

~~If the steamer loads at a port in the Gulf, owners to have privilege of coaling at Norfolk or Newport News.~~

THIS CHARTERPARTY INCLUDES CLAUSES NOS. 7 THROUGH 22 INCLUSIVE, AS ATTACHED, WHICH ARE TO BE CONSIDERED AS FULLY INCORPORATED HEREIN.

COOK INDUSTRIES, INC.

BY: John Hinkson

EDDIE'S SHIPPING AGENCY, INC.
FOR & ON BEHALF OF OWNERS
AS PER LETTER AUTHORITY - AS AGENTS

Advised by cable authority of

BY _____
E. H. EDDIE-ESQ. - CHAIRMAN

WE HEREBY CERTIFY, That this is a true and correct copy of the original Charter Party in our custody.

2798

NOTE: THIS INVOICE IS SUBJECT TO RETROACTIVE BILLING, EFFECTIVE OCTOBER, 1971

7. Owners have the option to complete with cargo to Japan or Korea but if required by Charterers Formosa to be first port of discharge.

8. Owners guarantee that this vessel has not called at a Cuban or North Vietnam port since January 1, 1963 and presently has no commitment to call at a Cuban or North Vietnam port subsequent to this voyage.

9. Cargo to be loaded according to berth terms with customary berth despatch within a total of five (5) weather working days of 24 consecutive hours, Sundays and holidays excepted. If longer detained, Charterers to pay demurrage at the rate of FIFTEEN HUNDRED DOLLARS ($1500.00) U.S. Currency per day or pro rata for part of a day provided such detention shall occur by default of Charterers or their agents. If sooner loaded, Owners to pay Charterers despatch money at the rate of SEVEN HUNDRED FIFTY DOLLARS ($750.00) U.S. Currency per day or pro rata for part of a day for all laytime saved in loading.

10. Cargo to be discharged by Receivers' stevedores free of risk and expense to vessel at the average rate of 1500 Metric Tons per weather working day of 24 consecutive hours, Sundays and holidays excepted. If longer detained, Charterers Receivers to pay demurrage at the rate of FIFTEEN HUNDRED DOLLARS ($1500.00) U.S. Currency per running day or pro rata for part of a day for all time used in excess of allowed laytime. If sooner despatched, Owners to pay Charterers Receivers despatch money at the rate of SEVEN HUNDRED FIFTY DOLLARS ($750.00) U.S. Currency per day or pro rata for part of a day for all laytime saved. Owners guarantee three (3) hatches available continuously for discharge. Owners guarantee to provide eight (8) vacuvators and provide power and labor to operate them at Owners' expense, if required. Owners further guarantee vacuvators will discharge at a Minimum rate of 25 Metric Tons per hour per vacuvator.

11. Laydays are not reversible.

12. Overtime to be for account of party ordering same. Officers' and crew's overtime always to be for Owners' account.

13. Lighterage, if any at discharge port, to be at Owners' risk and expense and

14. At discharge port, vessel to open and close hatches at vessel's time and expense.

15. Shifting between loading berths and between discharging berths to be for vessel's account and time used to count as laytime.

16. Vessel to be left in safe, seaworthy trim for shifitng between loading berths and/or between discharging berths to Master's satisfaction.

17. Owners' agents to be employed at loading and discharging ports.

18. Any extra insurance on cargo due to vessel's ownership, age, flag or classification to be for Owners' account.

BEST COPY AVAILABLE

any extent, such term shall be valid to that extent but no further.

NEW JASON CLAUSE: In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.
If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

BOTH TO BLAME COLLISION CLAUSE: If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:
"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."
The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

P. AND I. CLUB DEVIATION CLAUSE: The vessel, in addition to all other liberties, shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever, whether such ports are on or off the direct and/or customary route or routes, to the ports of loading or discharge named in this Charter, and there take all bunkers in any quantity in the discretion of owners, even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried, whether such amount is or is not required for the chartered voyage.

WAR RISK CLAUSE: (1) No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered. (2) The ship shall have liberty to comply with any orders or directions as to the departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly. C.S.U.K., London - 24th September 1933.

NEW YORK PRODUCE EXCHANGE ARBITRATION CLAUSE: Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

AMENDED CENTROCON STRIKES CLAUSE: If the Cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the Cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by Riots, Civil Commotions or a Strike or Lock-out on the Railways, or in the Docks, or other loading places, or if the Cargo cannot be discharged by reason of Riots, Civil Commotions, or of a Strike or Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes provided that a Strike or Lock-out of the Shippers' and/or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the Strike or Lock-out. In case of any delay by reason of the before-mentioned causes, no claim for damages or demurrage, shall be made by the Charterers, Receivers of the Cargo, or Owners of the Steamer. For the purpose however, of settling Demurrage money accounts any time lost by the steamer through any of the above causes shall be counted as time used in loading or discharging, as the case may be.

NOTE: THIS INVOICE IS SUBJECT TO RETROACTIVE BILLING, EFFECTIVE OCTOBER 1, 1979

REC

DATE 1/11/72

Make Checks Payable To: ST. JOHN SHIPPING CO., IN
P. O. DRAWER C.
RESERVE, LOUISIANA 70084

TERMS: PAYABLE UPON RECEIPT OF INVOICE
Please refer to number when making payment of this bill.

For Services As Follows: LOADING

14,468.5 L/T SOYBEANS @ $.21 PER TON			$3,038.39

NOTE: THIS INVOICE IS SUBJECT TO RETROACTIVE BILLING, EFFECTIVE OCTOBER 1, 19[illegible]

EX B-1

SJS—1-69

INVOICE Nº [illegible]

TO S/S NORMA AND/OR OWNERS AND/OR
GULF COAST SHIPPING CORP., AS AGENTS

NUMBER 293-1-72

DATE 1/11/72

Make Checks Payable To: ST. JOHN SHIPPING CO., INC.
P. O. DRAWER C
RESERVE, LOUISIANA 70084

TERMS: PAYABLE UPON RECEIPT OF [illegible]
Please refer to number when making payment of this bill.

For Services As Follows: TRANSPORTATION

28 TRIPS @ $2.50 PER TRIP			$70.00

NOTE: THIS INVOICE IS SUBJECT TO RETROACTIVE BILLING, EFFECTIVE OCTOBER 1, 1971

283a

TO GULF COAST SHIPPING CORP., AS AGENTS

NUMBER 293-1-72

DATE 1/11/72

Make Checks Payable To: ST. JOHN SHIPPING CO., INC.
P. O. DRAWER C
RESERVE, LOUISIANA 70084

TERMS: PAYABLE UPON RECEIPT OF INVOICE
Please refer to number when making payment of this bill.

For Services As Follows: DETENTIONS AND/OR GUARANTEED TIME

FOREMAN	7-3/4 HRS. S/T @ $8.36 PER HOUR	$ 64.79
LONGSHOREMEN	77½ HRS. S/T @ $7.44 PER HOUR	576.30
WATERBOY	7-3/4 HRS. S/T @ $6.59 PER HOUR	51.09
SUPERINTENDENT	7-3/4 HRS. S/T @ $8.36 PER HOUR	64.79
CLERK	27 HRS. S/T @ $7.78 PER HOUR	210
		$

NOTE: THIS INVOICE IS SUBJECT TO RETROACTIVE BILLING, EFFECTIVE OCTOBER 1, 1971

EX B-3

SJS-1-69

INVOICE Nº 1

TO S/S NORMA
COOK INDUSTRIES, IN C.

NUMBER 293-1-72

DATE 1/11/72

Make Checks Payable To: ST. JOHN SHIPPING CO., INC.
P. O. DRAWER C
RESERVE, LOUISIANA 70084

TERMS: PAYABLE UPON RECEIPT OF INVOICE
Please refer to number when making payment of this bill.

For Services As Follows: OVERTIME DIFFERENTIAL

FOREMAN	11 HRS. O/T @ $3.25 PER HOUR	$ 35.75
FOREMAN	3 HRS. O/T @ $3.50 PER HOUR	10.50
LONGSHOREMEN	110 HRS. O/T @ $2.78 PER HOUR	305.80
LONGSHOREMEN	30 HRS. O/T @ $3.55 PER HOUR	106.50
WATERBOY	11 HRS. O/T @ $2.37 PER HOUR	26.07
WATERBOY	3 HRS. O/T @ $4.74 PER HOUR	14.22
SUPERINTENDENT	11 HRS. O/T @ $3.25 PER HOUR	35.75
SUPERINTENDENT	3 HRS. O/T @ $5.00 PER HOUR	15.00
CLERK	11 HRS. O/T @ $2.96 PER HOUR	32.56
CLERK	3 HRS. O/T @ $3.92 PER HOUR	11.76
		$ 585.89

OCTOBER 1, 1971

BROKER CONTRACT NUMBER

COOK'S CONTRACT NUMBER 5013106E

SOLD TO CHINA [illegible] DEVELOPMENT
TAIPEI
TAIWAN

CONTRACT DATE 11-19-71

QUANTITY SOLD 14,000 METRIC TONS BUSHELS 514,436.00 TOLERANCE 5.0 %

GRADE & CROP #2 YELLOW SOYBEANS

OTHER SPECS FEDERAL APPEAL

RATE 12?.50 PER METRIC TON

PRICE BASIS LOCATION GULF FORMOSA

SHIPMENT PERIOD DEC 25/JAN 15

WEIGHTS TO GOVERN LOADING OFFICIAL

GRADES TO GOVERN LOADING OFFICIAL-FEDERAL

DISCOUNT SCALE

INSURANCE C & F BUYER

ROUTING DRY CARGO GEARED OVER AGE 8

PAYMENT TERMS PRT NET CASH IRREV DIV L/C BY PRIME US BNK NYC OPENED PRIOR LDG IN EXCH SHPG DOCS

ORIGIN US GULF OR ATLANTIC

DESTINATION KAOHSIUNG

REMARKS GOVERNING CONTRACT: ICSA 79 FULL OR PART CARGO SELLERS OPTION FORMAT
FIRST OR SECOND DISPORT S/O VIA EITHER JAPAN OR KOREA
DISCHARGE - BUYERS ACCOUNT BUYERS QUAD DISCHARGE RATE OF 1,500 M/T

DATE	OUTRIGHT PRICE	FUTURE DISC.	FLAT PRICE	BUSHELS PRICED	BUSHELS UNPRICED (HEDGED)

BROKER NAME CTEC
RATE .15000 PER METRIC T
PAID
DATE
ALLOC PERIOD FH JAN 514,436

EXPORT CAN EQUAL 3.22 7
F.O.B. GULF OFF 9,000.00 EXTRAS
BUNKERS [illegible] DISCHARGE
LOAD CHARGES [illegible]

ADV. DATE	EXPORT CERTIFICATION NUMBER	FINAL SETTLEMENT DATE	OPEN BALANCE	LONG	INVOICE NUMBER	CONTRACT NUMBER	BL
1/5/72	[illegible]	540,157/29	filled	14,000.504			
			equalling				
			14,700 m/t x $ 77.65			= $ 1,076 455.	

(CHARTER)

EXHIBIT A

285a

OFFICIAL WEIGHT CERTIFICATE No. 619-1

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-3-72 | LOCATION BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I held a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including double bags, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

3,002,649 POUNDS

50,157/29/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

W. D. Duffy
LICENSED WEIGHMAN

COPY — NOT NEGOTIABLE

EX. D-1

DESTREHAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-2

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-3-72 | LOCATION BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I held a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including double bags, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

3,124,107 POUNDS

50,100/20/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

William D. Duffy
LICENSED WEIGHMAN

COPY — NOT NEGOTIABLE

286a

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-3

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-5-72

LOCATION BAYSIDE ELEVATOR CO.
A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

1,831,969 POUNDS

30,866/09/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel X. Willis
CHIEF WEIGHMASTER

LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX D-3

FORM 205

DESTREHAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-4

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-5-72

LOCATION BAYSIDE ELEVATOR CO.
A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

2,204,232 POUNDS

71,570/32/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel X. Willis
CHIEF WEIGHMASTER

LICENSED WEIGHER

COPY — NOT NEGOTIABLE

DESTINATION: OFFICIAL WEIGHT CERTIFICATE No. 619-5

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-5-72	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, in which capacity that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, as duly ascertained on the following vessel is that stated below:

KIND OF GRAIN: Soybeans

VESSEL: S/S HORMA

STOWAGE: Holds Nos. 1,3,5.

2,082,126 POUNDS

48,035/26/60 BUSHELS

FOR ACCOUNT OF: Cook Industries, Inc.

Daniel X. Willis
CHIEF WEIGHMASTER

W. J. Lodden Jr.
LICENSED WEIGHMASTER

COPY — NOT NEGOTIABLE

EX. D-5

DESTINATION: DEVONIAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-6

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-72	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, in which capacity that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, as duly ascertained on the following vessel is that stated below:

KIND OF GRAIN: Soybeans

VESSEL: S/S HORMA

STOWAGE: Holds Nos. 1,3,5.

2,082,126 POUNDS

48,035/26/60 BUSHELS

FOR ACCOUNT OF: Cook Industries, Inc.

Daniel X. Willis
CHIEF WEIGHMASTER

W. J. Lodden Jr.
LICENSED WEIGHMASTER

COPY — NOT NEGOTIABLE

"EXPORT" **OFFICIAL WEIGHT CERTIFICATE** No. 619-7

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-5-72	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including deductions, if any, of such grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

8,102,362 POUNDS

135,039/22/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel X. Willis
CHIEF WEIGHMASTER

W J Dempsey
LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX D-7

NEW ORLEANS BOARD OF TRADE

"EXPORT" **OFFICIAL WEIGHT CERTIFICATE** No. 619-8

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-72	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including deductions, if any, of such grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

2,757,600 POUNDS

[illegible] BUSHELS

FOR ACCOUNT OF [illegible] Cook Industries, Inc.

[illegible]
CHIEF WEIGHMASTER

W J Dempsey
LICENSED WEIGHER

COPY — NOT NEGOTIABLE

BALTIMORE FORM G

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by [illegible] (U.S. FLAG)

on board the good steamship or motor vessel, called the

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: FORTY FOUR THOUSAND EIGHTY FOUR BUSHELS TWENTY NINE POUNDS (44,084/
NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 2,[illegible] POUNDS = 1,131.102
1,[illegible].000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of

(the dangers of the Seas only excepted), unto [illegible] BANK OF AMERICA

TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE
44,[illegible]/29-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1, 3, 5

NOTIFY: BANK OF AMERICA NT&SA, TAIPEI AND
CHINA TRADE & DEVELOPMENT CORP.,
3RD FLOOR, 69 HWAN CHIEN RD., TAI
O/B: KING FAT IN OIL FACTORY CO.,

ON BOARD - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

BY: [signature]

COPY

NOT NEGOTIA

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK, DEC.

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FU
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or [illegible] crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, [illegible] to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the [illegible] other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and [illegible] rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, [illegible] dents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariner [illegible] of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship'd [illegible]

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be [illegible] security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy [illegible] properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, or from unseaworthiness, whether exis [illegible] improvement of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness (was not discoverable by the exercise of due di [illegible] shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due [illegible] owners of the cargo shall, nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute to [illegible] signees or owners of the cargo shall, nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute to [illegible] in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the comm [illegible] relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster [illegible] from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, [illegible] and date; one of which being accomplished, the others to stand void.

Dated at RESERVE, LOUISIANA
this JANUARY 5, 1972

Set No. 10

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by [illegible]

on board the good steamship or motor vessel, called the "[illegible]" (U.S. FLAG)

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: [illegible] FORTY FOUR THOUSAND SIX HUNDRED FORTY FIVE BUSHELS FORTY POUNDS (44,645/40-60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 2,678,740 PO[illegible] 1,192.2661 LONG TONS - 1,215.000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of

TAIPEI (the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERICA

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

44,645.40-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1, 3, 5

NOTIFY: BANK OF AMERICA NT&SA, TAIPEI AND
CHINA TRADE & DEVELOPMENT CORP.,
3RD FLOOD, 59 HSIAN CHIEN RD., TA[illegible]
O/B: KING TAI TW OIL FACTORY CO.,

ON BOARD - JANUARY 25, 1972
RESERVE, LOUISIANA
GULF COAST [illegible]ING CORP., AS AGENTS.

BY: _____

COPY

NOT NEGOTIABL[illegible]

"[illegible] law prohibits the export of these commodities to the Com[illegible] Area, Mongolia, North Korea, Communist controlled areas of Viet Nam and China, [illegible] Northern Rhodesia or those otherwise embargoed by the United States."

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK, DEC. [illegible]

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or [illegible] crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of [illegible] other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints [illegible] rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, stranding [illegible] cidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or [illegible] of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband [illegible]

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, [illegible] security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and [illegible] properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation or in the [illegible] management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the [illegible] shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the [illegible] shippers or owners of the cargo shall, nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the [illegible] in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to [illegible] relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at RESERVE, LOUISIANA
JANUARY 25, 1972

[illegible] GULF COAST [illegible]ING CORP., AS AGENTS FOR THE MASTER

Set No. _____

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by CARGILL INCORPORATED, INC.

on board the good steamship or motor vessel, called the "HERMA" (U.S. FLAG)

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: FORTY EIGHT THOUSAND SIX HUNDRED EIGHTY SEVEN BUSHELS FORTY POUNDS (48,687/40-60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 2,921,250 POUNDS 1,324.1999 LONG TONS - 1,325.000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of [illegible]

(the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERICA N

TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

48,687/40-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1, 3, 5

NOTIFY: BANK OF AMERICA NT&SA, TAIPEI
AND CHINA TRADE & DEVELOPMENT CO
3FR, FL., 59 KUAN CHIEN RD., TA
O/C:
KUAN YI OIL INDUSTRY CO., LTD

ON BOARD - JANUARY 5, 1978
RESERVE, LOUISIANA
GULF GRAIN EXPORTING CORP., AS AGENTS

BY: [signature]

COPY
NOT NEGOTIABL

[boilerplate: "...delivery of these presents duties to the Public Laws ... Commerce ... Treasury ... Customs ... Commercial ... Code of Federal Regulations ... Customs ... Service ... Customs ... Customs ... Customs

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by COOK INDUSTRIES, INC.

on board the good steamship or motor vessel, called the "NORMA" (LIB. FLAG)

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: FORTY SEVEN THOUSAND SEVEN HUNDRED SIXTY NINE BUSHELS TWO POUNDS (47,769/02=60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 2,066,142 POUND 1,777,827E LONG TONS - 1,500,000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of AS

(the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERICA TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

47,769/02-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1, 3, 5

NOTIFY: BANK OF AMERICA NT&SA, TAIPE
AND CHINA TRADE & DEVELOPMENT
3RD. FL., 69 KWAN CHIEN RD.,
O/B:
YUAN YI OIL INDUSTRY CO., LT

ON BOARD - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

BY: _____

COPY

NOT NEGOTIAB

"[illegible] any false [illegible] document [illegible] to the Bank Bill Commission [illegible] Taiwan, Taipei Area, Republic of China, [illegible] entitled a crime of Violating Bank Bill Control Law. Offenders shall be punished in accordance with [illegible] otherwise authorized by the Central Bank."

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK, DEC.

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULL
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or [illegible] crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, [illegible] to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the [illegible] other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests or [illegible] rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, [illegible] dents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners [illegible] of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the ship's [illegible]

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be given [illegible] security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy [illegible] properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in [illegible] management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether such [illegible] equipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due [illegible] shippers or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with [illegible] in General Average to the payment of any sacrifices, losses or expenses of a general Average nature that may be made or incurred for the common [illegible] relieve the adventure from any common peril, all acts to the same intent and effect, and to the same extent, as if such danger, damage or disaster [illegible] from, or been occasioned by faults or errors in navigation or in the management of the vessel or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading [illegible] and dated one of which being accomplished, the others to stand void.

Dated at RESERVE, LOUISIANA
JANUARY 5, 1972

Set No. [illegible]

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADI

SHIPPED, in apparent good order and condition, by [illegible]

on board the good steamship or motor vessel, called the [illegible] (U.S.A. FLAG)

now lying in the port of [illegible] and bound for KAOHSIUNG, TAIWAN

viz: SIXTY ONE THOUSAND FIVE HUNDRED FORTY EIGHT BUSHELS THIRTY THREE F[illegible]
(61,548/33-60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 3,352,913 P[illegible]
1,862.5625 LONG TONS - 1,875.000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of

VALPEY (the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERIC[illegible]

or to his or their Assigns, he or they paying freight for the said goods at the rate of "FREIGHT PREPAID"

QUANTITY, DESCRIPTION AND STOWAGE

61,548/33-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NYGSA, TAIPE[illegible]
AND CHINA TRADE & DEVELOPME[illegible]
3RD. FL., 59, KRAN CHIEN TO[illegible]
O/A:
HENG LUNG OIL MILL CO., LTD.

ON BOARD - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

J. [illegible]

COPY
NOT NEGOTIAB[illegible]

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DEC. 1[illegible]

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or [illegible] crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such [illegible] to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of [illegible] other waters, or fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints [illegible] rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, strandings [illegible] cidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or [illegible] of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or [illegible]

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, and [illegible] security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and to [illegible] properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, [illegible] management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness whether existing at the [illegible] ipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), [illegible] officers or owners of the cargo shall, nevertheless, [illegible] and any special charges incurred in respect of the cargo, contribute with the o[illegible] in General Average to the payment of any sacrifices, [illegible] as if such faults or errors had not been committed. And the owners of the cargo shall be severally liable for their proportion of any debts or liabilities incurred for the common benef[illegible] relieve the adventure from any common peril, all [illegible] same force and effect as if a General Average act had been performed, or a General Average peril existed, for the purpose of which a General Average contribution might be required, and [illegible] from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at [illegible]

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by COOK INDUSTRIES, INC.

on board the good steamship or motor vessel, called the "NORMA" (LTD. FLAG)

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: SEVENTY THREE THOUSAND FOUR HUNDRED NINETY BUSHELS FORTY NINE POUNDS (73,490/48-60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 4,405,449 POUND

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of As

(the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERICA N

TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of "FREIGHT PREPAID"

QUANTITY, DESCRIPTION AND STOWAGE

73,490/48-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NT&SA, TAIPEI
AND CHINA TRADE & DEVELOPMENT
3RD. FL., 59, KWAN CHIEN TO..
O/B:
HENG LUNG OIL MILL CO., LTD.

ON BOARD - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST [illegible] CORP., AS AGENTS

BY: _____

COPY
NOT NEGOTIAB

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DEC. 16,

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY W
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States apumved April 16 shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by collisions, stranding cidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners or ot of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband o

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared thereto to be signed, ship security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at t shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), shippers or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit relieve the adventure from any common peril, all with the same force and effect and to the same extent, as if such sacrifice, damage or disaster had not from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to Bills of Lading, all of thi and date; one of which being accomplished, the others to stand void.

Dated at

BERTH TERM GRAIN BILL OF LADI

SHIPPED, in apparent good order and condition, by [illegible]

on board the good steamship or motor vessel, called the "[illegible]"

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: [illegible] THOUSAND TWO HUNDRED SIXTY SEVEN BUSHELS FORTY THREE POUND
[illegible] NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 465,063 POU
[illegible] LONG TONS - 225,000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port o

[illegible] (the dangers of the Seas only excepted), unto ORDER OF BANK OF AMERI

or to his or their Assigns, he or they paying freight for the said goods at the rate of "FREIGHT PREPAID"

QUANTITY, DESCRIPTION AND STOWAGE

[illegible]-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NT&SA, TA
AND CHINA TRADE & DEVELOPMEN
3RD. FL., 59, KWAN CHIEN R
O/B:
AGET CHENG OIL MILL CORP.

ON BOARD - JANUARY 6, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

THIRD ORIGIN

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DEC. [illegible]

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF P
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved Ap shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights o crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, st cidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariner of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be s security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects p property named, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether ex pment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not due to the want of due diligence by the owners of the ship or any of them), the owners of the cargo shall, nevertheless pay salvage and any special charges incurred in support of the vessel and shall contribute with General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the comm relieve the adventure from any common peril or for the safety thereof, and to the same extent as if such sacrifices, damage or disaster form, or been occasioned by faults or errors in navigation or in the management of the vessel or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all and date, one of which being accomplished, the others to stand void.

Dated at [illegible]

[illegible]

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by [illegible]

on board the good steamship or motor vessel, called the "[illegible]" (LIB. FLAG)

now lying in the port of BEAUMONT, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: TWENTY FIVE THOUSAND NINE HUNDRED EIGHTY EIGHT BUSHELS ELEVEN POUNDS
(25,988/11-60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 1,565,291 POUND
699.1122 LONG TONS - 707.250 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of [illegible]

(the dangers of the Seas only excepted), unto ORDER OF BANK OF AMERICA N
TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of "FREIGHT PREPAID"

QUANTITY, DESCRIPTION AND STOWAGE

25,903/11-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NTASA, TAIPEI
CHINA TRADE & DEVELOPMENT CORP.
2ND. FL., 59, NAN CHIEH RD.,
O/B:
HUA SHUNG SOLVENT OIL CO., LTD.

ON BOARD - JANUARY 5, 1972
BEAUMONT, LOUISIANA
BULK [illegible] SHIPPING CORP., AS AGENTS

BY: _____

COPY

NOT NEGOTIABLE

"[illegible] conditions of these commodities to the Port of [illegible], Taiwan, the nearest available safe port, in the event of [illegible] United States."

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DEC. [illegible]

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the dangers of the seas or other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints of rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, stranding or accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the ship's husband or manager.

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed and such security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation or management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of the beginning of the voyage (and whether the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence) or at any time whatsoever, the owners of the cargo shall, as between themselves, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the steamer in general average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at [illegible]
[illegible]

[illegible]

GRAIN BILL OF L

SHIPPED, in apparent good order and condition, by

on board the good steamship or motor vessel, called the

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWA

viz: ELEVEN THOUSAND TWENTY THREE [illegible] THIRTY SEVEN POUNDS (
NO. 2 YELLOW SOYBEANS IN BULK WEIGHING [illegible]
300,000 METRIC TONS
Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesa

TAIPEI (the dangers of the Seas only excepted), unto ORDER OF BANK OF

or to his or their Assigns, he or they paying freight for the said goods at the rate of "FREIGHT PR

QUANTITY, DESCRIPTION AND STOWAGE

11,023,[illegible]60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA N.T.&S.A.,
AND CHINA TRADE & DEVEL
3RD. FL., 69, KUAN CHE
C/E:
HSIEH CHENG OIL MILL CO

ON BOARD - JANUARY 5, 1972
RESERVE, LOUISIANA
BULK GRAIN LOADING CORP., AS AGENTS

COPY
NOT NEGOTI

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DE

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading is repugnant to said Act to any extent, such term shall be void to that extent but no further.
2. Each Bill of Lading to cover the bulk or bulk quantity only.
3. Surveyor's weight, quantity and quality [illegible].
4. It is hereby mutually agreed that the Carrier shall not be liable for any loss or damage to or in connection with the goods consigned under this Bill of Lading which occurs before the loading of the goods on board the vessel or after the discharge of the goods from the vessel, or while the goods are in the custody of persons not employed by the Carrier, or for any loss or damage to the goods arising from any cause or event which occurs while the goods are not in the actual custody of the Carrier and without the fault or neglect of the Carrier or of any person employed by the Carrier.
5. General Average [illegible] to be given to the Carrier [illegible] to be adjusted according to the York-Antwerp Rules 1950 [illegible] Average Agreement or Bond and such cash deposit as the Carrier may require, including [illegible] whether or not the particular average sacrifice, loss or expense of which complaint is made would have been allowed as general average had the vessel been lost at the time when such sacrifice, loss or expense was incurred.

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADI

SHIPPED, in apparent good order and condition, by COOK INDUSTRIES, INC.

on board the good steamship or motor vessel, called the "[illegible]" (LIB. FLAG

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: TWENTY TWO THOUSAND FORTY SEVEN BUSHELS FIFTEEN POUNDS (22,047/15
NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 1,322,835 POUNDS - 599.991
599.990 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of

TAIPEI (the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERI

or to his or their Assigns, he or they paying freight for the said goods at the rate of "FREIGHT PREPAID"

QUANTITY, DESCRIPTION AND STOWAGE

22,047/15-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NTASA, TAIPEI
CHINA TRADE & DEVELOPMENT BLDG.
3RD. FL., 99, KWAN CHIEN RD.
O/B:
HUA SHUNG SHIPMENT DEV. CO.

ON BOARD - JANUARY 6, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

BY: _____

COPY
NOT NEGOTIABLE

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DEC. 1[illegible]

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULL
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved Apr[illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or in[illegible] crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such [illegible] to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the dangers of the [illegible] other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints of [illegible] rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, strandings, [illegible] cidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or other [illegible] of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Managers [illegible]

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average bond with values declared thereto to be signed, and [illegible] security to be given as required by Master or Agents. If the owners shall have exercised due diligence to make the Steamer in all respects seaworthy and [illegible] properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation or [illegible] management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the [illegible] sistent or owners of the cargo shall, nevertheless, pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the [illegible] to the said Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common [illegible] relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such charges, damage or disaster had [illegible] from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all of t[illegible] and date; one of which being accomplished, the others to stand void.

Dated at [illegible]
[illegible], 19[illegible]

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by [illegible] INDUSTRIES, INC.,

on board the good steamship or motor vessel called the "NORMA" (LIB. FLAG)

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: FOURTEEN THOUSAND SIX HUNDRED NINETY EIGHT BUSHELS TEN POUNDS (14,6
#2 YELLOW SOYBEANS IN BULK WEIGHING 801,896 POUNDS - 893.7000 LO
400,000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of KA

TAIPEI (the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERICA

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

14,698/10-50 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS 1, 3, 5

NOTIFY: BANK OF AMERICA NT&SA, TAI
CHINA TRADE & DEVELOPMENT C
3RD. FL., 50 KUAN CHIEN RD.
O/B:
HUEY [illegible] L CO., LTD.

[illegible] - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

BY _____

COPY

NOT NEGOTIABLE

[illegible] Carrier's Liability Exemption of these enumerated Articles to the Postal Mail, Commercial Parcel Post Service, Sea Mail, Air Mail, Commercial Express Service, Air Freight and Air Cargo, and Customs Brokerage Offices contracted by the United States.

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK, DEC. [illegible]

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY [illegible]
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term [illegible] to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the other waters, by fire from any cause wheresoever occurring, or barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints of rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, strandings or accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or other of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or [illegible]

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, also security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or relieve the adventure from any common peril, all with the same force and effect and to the same extent as if such sacrifice, danger, disaster or disaster had arisen from, or been occasioned by faults or errors in navigation or in the management of the vessel or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] bills of Lading, all of this and date; one of which being accomplished, the others to stand void.

Dated at [illegible]

[illegible] - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

Set No. [illegible] MASTER

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by [illegible]

on board the good steamship or motor vessel called the [illegible] (FLAG)

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: SIXTEEN THOUSAND ONE HUNDRED SIXTY SEVEN BUSHELS FIFTY EIGHT POUNDS (16,167/58-60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 870,072 POUNDS 432.870 LONG TONS - 440.000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of [illegible]

(the dangers of the Seas only excepted), unto ORDER OF BANK OF AMERICA N.T.&S.A. TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

16,167/58-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS 1, 3, 5

NOTIFY: BANK OF AMERICA N.T.&S.A., TAIPEI
CHINA TRADE & DEVELOPMENT CORP.
3RD. FL., 99 KUAN CHIEN RD., TAIPEI
C/P:
HOEY GRAIN CO., LTD.

ON BOARD - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

BY: _____

COPY

NOT NEGOTIABLE

"[illegible] law and the dispositions of the same shall apply to the Bill of Lading. Consignee [illegible] Consignee's endorsement or receipt of this Bill of Lading, [illegible] freedom unless otherwise authorized by the United States."

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK, DEC. 15

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY [illegible] ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term [illegible] to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints of rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, strandings or accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband [illegible]

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed and security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation or management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers or owners of the cargo shall, nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all of this and date; one of which being accomplished, the others to stand void.

Dated at [illegible]

Bet No. [illegible]

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by [illegible], INC.

on board the good steamship or motor vessel, called the "[illegible]" (LIB. FLAG)

now lying in the port of [illegible], LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: THIRTY-FOUR THOUSAND EIGHT HUNDRED TWENTY FIVE BUSHELS TWENTY EIGHT POUN
34,825/28-60) NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 2,069,526 POUNDS
938.8285 LONG TONS - 947,750 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of [illegible]

(the dangers of the Seas only excepted), unto BANK OF AMERICA NT&SA

TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

34,825/28-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NT&SA, TAIPEI
CHINA TRADE & DEVELOPMENT CORP.
3RD FLOOR, 59, KWAN CHIEN RD.,
O/B:
SHUT FA [illegible] LTD.

ON BOARD - JANUARY 5, 1972
[illegible], LOUISIANA
[illegible] LOADING CORP., AS AGENTS

COPY
NOT NEGOTIABLE

BY: _____

"[illegible] the port of loading of these commodities to the first discharging port [illegible] Charter Party, Clause [illegible] Section 8 establish a ceiling value [illegible] [illegible] [illegible] values otherwise customarily by the United States."

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DEC. 16,

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved [illegible] shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or [illegible] crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such [illegible] to that extent but no further.
2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.
3. Shipper's weight, quantity and quality unknown.
4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, stranding cidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband
5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence signees or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all of this and date; one of which being accomplished, the others to stand void.

Dated at [illegible], LOUISIANA
[illegible]

[illegible] No. [illegible] MASTER

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by COOK INDUSTRIES, INC.

on board the good steamship or motor vessel, called the "PORPA", (LIB. FLAG)

now lying in the port of RESERVE, LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: THIRTY SIX THOUSAND SEVEN HUNDRED FORTY FIVE BUSHELS TWENTY FOUR POUNDS
(36,745/24-60, NO. 2 YELLOW SOYBEANS IN BULK WEIGHING 2,204,774 POUNDS
984.2920 LONG TONS - 1,000.000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of AS AOO

(the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERICA NTSS
TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of . FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

36,745/24-60 BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NTSA, TAIPEI AND
CHINA TRADE & DEVELOPMENT CORP.
3RD FLOOR, 5S, KWAN CHIEN RD., TAI
O/B:
SHUI FA OI LTD.

ON BOARD - JANUARY 5, 1972
RESERVE, LOUISIANA
GULF COAST SHIPPING CORP., AS AGENTS

BY: _____

COPY

NOT NEGOTIABLE

ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED NEW YORK DEC. 16,

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 19
shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities
crease of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term sha
to that extent but no further.
2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.
3. Shipper's weight, quantity and quality unknown.
4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of
other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints
rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, stranding
cidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or
of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or
5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, and
security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the steamer in all respects seaworthy and
properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation
management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at
shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence),
signees or owners of the cargo shall, nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the
in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common
relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such charge, damage or disaster had not
from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to Bills of Lading, all of this and date; one of which being accomplished, the others to stand void.

AS AGENTS FOR THE MASTER

Dated at RESERVE, LOUISIANA
JANUARY 5, 1972

Set No. 7

SHIPPED, in apparent good order and condition, by

on board the good steamship or motor vessel, called the

now lying in the port of and bound for

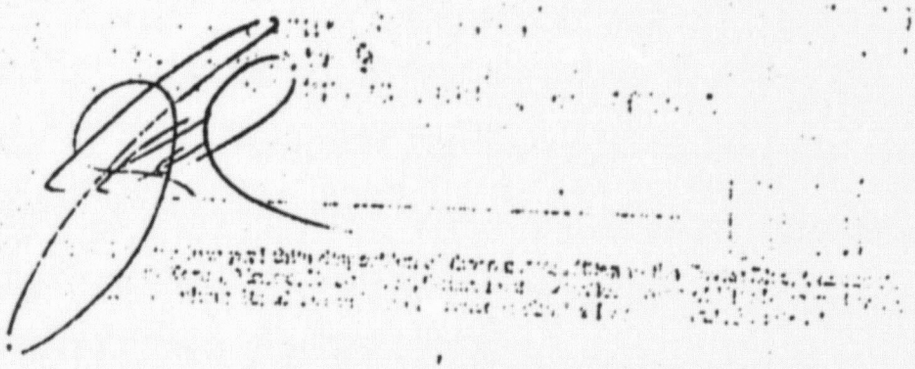
viz:

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of

(the dangers of the Seas only excepted), unto

or to his or their Assigns, he or they paying freight for the said goods at the rate of

QUANTITY, DESCRIPTION AND STOWAGE



ALL TERMS, CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING, NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April
shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or
exemptions of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such
to that extent but no further.

2. Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils
dock waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints
riots or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by collisions, stress of
stress of navigation of whatsoever kind even when caused by the negligence, default or error in judgment of the pilot, master, mariners, or
of the ship owners, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband

5. General Average shall be payable according to the York Antwerp Rules, 1950. Average Bond with values declared therein to be
owners to be given as required by Master or Agents. If the owner shall have exercised due diligence to have the Steamer in all respects seaworthy
Steamer has been properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation
management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether
the commencement of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due
diligence of owners of the cargo shall, nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute
to General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common
relieve the steamer from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had
from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect in the machinery or appurtenances.

In Witness Whereof, the Master or Agent of said vessel hath affirmed to Bills of Lading, all of this
and date; one of which being accomplished, the others to stand void.

Dated at

Set No.

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADING

SHIPPED, in apparent good order and condition, by

on board the good steamship or motor vessel, called the

now lying in the port of and bound for

viz:

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of

(the dangers of the Seas only excepted), unto

or to his or their Assigns, he or they paying freight for the said Goods at the rate of

QUANTITY, DESCRIPTION AND STOWAGE

NOT NEGOTIABLE

ALL TERMS CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY
ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April
shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities
or increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term
to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of
other waters be free from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraints
master or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by quarantine, steps
clause of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, mariner, engineer
of the ship owners), and resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed,
amounts to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy
properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation
navigation of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at
it should be at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence
which no owners of the cargo shall, nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with
to General Average in the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common
relieve the carrier from any common peril, or the consequences of a General Average nature that may be made or incurred for the common
from or have been occasioned by faults or errors in navigation or in the management of the vessel or any other default or unseaworthiness.

In Witness Whereof, the Master or Agent of said vessel has affirmed to
and dates, one of which being accomplished, the others to stand void.

Bills of Lading, all of

Dated at

EXH. C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.

-and-

AUSTIN NAVICATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250 (CES)

AFFIDAVIT

- X

STATE OF LOUISIANA)
: SS.:
PARISH OF ST. JOHN THE BAPTIST)

DANIEL X. WILLIS, being duly sworn deposes and says:

1. That he is the Chief Weighmaster of the Destrehan Board of Trade, a non-profit, official inspection agency licensed by the United States Department of Agriculture to certify quantity and quality of bulk grain cargo for export and domestic shipments from the port of Reserve, Louisiana, and that he makes this affidavit based upon personal knowledge.

2. I have been a licensed weigher for the past ~~15 years~~ and am now employed as chief weighmaster of the Destrehan Board of Trade.

3. At the time of the loading of the M.V. Norma

On January 4th and 5th, 1972, I personally supervised the weight certification of the loading from grain elevators and can state that an official licensed weigher of Destrehan was at all times on hand to ensure the correctness of the weight certifications.

4. The scales used in weighing the cargo as discharged from the elevators had at that time been certified by both the State of Louisiana and various other private concerns as accurate within acceptable limits for weighing bulk grain.

5. It is my personal belief that the weight certificates for soybean cargo loaded aboard the M.V. Norma dated January 5, 1972 and numbered 619-1 through 619-6 inclusive, accurately reflect the true amount of grain loaded aboard that vessel.

Daniel K. Willis

Sworn to before me
this 31 day of January, 1974.

Notary Public

MEMO OF LAW BY F. W. MEEKER IN SUPPORT OF MOTION TO DISMISS
(pp. 307a-313a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al.,	:	
Plaintiffs,	:	
-against-	:	
M/S "NORMA", her engines, etc.	:	
-and-	:	Index No. 73 Civ. 250 (CES)
AUSTIN NAVIGATION CORP. LTD.,	:	
Defendant and Third-Party Plaintiff,	:	
-against-	:	
COOK INDUSTRIES INC.,	:	
Third-Party Defendant.	:	

MEMORANDUM

FACTS

Cook Industries, Inc. contracted with the China Trade Development Corporation on November 19, 1971 to sell a shipment of 14,000 Metric tons of # 2 yellow soybeans +/- 5%. C & F Formosa.

On December 16, 1971, Cook entered into a charter party with Austin Navigation Corporation, Ltd., for one voyage of the vessel Norma to carry the cargo it had contracted to sell to the China Trade Development

Corporation.

The vessel completed loading of the cargo on January 5, 1972 and arrived at Kaohsiung on March 2, 1972.

Subsequently, two suits were instituted by the buyer's assignees, Shui Fa Oil Mill et al, against Cook Industries sounding in breach of contract of sale and against the vessel and her owner sounding in breach of contract of carriage.

Issue was joined in both actions and the cases were consolidated subsequent to the filing of a third party complaint by Austin Navigation Corporation, Ltd., v. Cook Industries in its action and after a third party answer by Cook.

There is now pending before this court a motion on reargument for a stay of the action by Shui Fa Oil Mill et al, v. Cook pending arbitration. The filing of a motion by Cook for a stay pending arbitration between Cook and Austin Navigation Corporation in the C/P dispute has been postponed pending decision on the earlier motion to stay pending arbitration between Cook and Shui Fa Oil Mill.

ISSUE

1. Does the charter party between Cook and Austin burden Cook with liability for short loading?

2. Does the contract of sale between Cook and

China Trade Development burden Cook with liability for shortage on outturn?

DISCUSSION - ISSUE I

1. The charter party between Cook and Austin states that "cargo is to be loaded according to berth terms..." (page 3 paragraph 9)

The term of art, "berth terms" is well understood in the language of the chartering trade to mean that the risk and expense of loading, stowing, and discharging is to be for the account of the owner.

An arbitration reported in 1958 AMC 234, the M.V. Ripley, passed directly on the point when faced with a question of liability for deadfreight as claimed by a shipowner as against his charterer. The charter party quoted a lump sum of $287,500, "berth terms both ends..."

"On the other hand, where, as here, the charter is made on berth terms, the shipowner is responsible for loading, stowing and dunnaging the cargo at his expense, in accordance with applicable regulations and good steamship practice, and if he fails to lead the full quantity of cargo which he has contracted to load, he is liable in damages for breach of contract". Melanol Corporation v. Atlantic and Great Lakes Shipping Corporation 1958 AMC 234 at 237.

Austin has admitted the validity of the charter party in question in its third party complaint and from this quarter it will get no rebuttal.

It has also pleaded however, that it was the duty of the charterer (Cook) to load, stow, and discharge the vessel.

The wording of the C/P itself makes a mockery of this contention. Add to the plain language of the charter party, the fact that Austin was invoiced for (and presumably paid for) the stevedore services of St. John Shipping Company, Inc., and the entire fabric of the third party complaint is destroyed.

All the bills of lading for this cargo were issued by the agent of Austin "for the master" for the full quantity of soybeans as contracted for and invoiced. Austin cannot now be heard, especially in the light of its complete control of the loading operation, to complain that it was somehow deceived by Cook.

It is no defense to a carrier who issues negotiable bills of lading for a specific quantity of goods that the bills of lading are in error as to the quantity. Indeed it has been held that even where there is an explicit disclaimer on the face of the bill as to the certainty of the quantity represented on the bill, the court will estop the issuing carrier from showing otherwise. Spanish American Skin Company v. M.S. Fangulf et al 1956

AMC 2238.

Here we haven't even a disclaimer by the carrier Austin as to quantity.

Even assuming arguendo the worst possible set of facts imaginable to Cook i.e. that Cook did not deliver the proper quantity of soybeans to the vessel, the two facts of the C/P berth terms provision and Austin issuance of bills of lading conforming to the contract of sale would estop Austin from recovering over against Cook on the instant third party complaint in the absence of a letter of indemnity from Cook to Austin. No such letter has been alleged or produced.

ISSUE II

Turning to the second issue, Shui Fa et al, have claimed directly against Cook for breach of contract for failing to deliver to plaintiffs the contract amount of product.

Again it will be assumed arguendo that the plaintiffs herein did not receive the full 14,700 M/T of soybeans for which they allegedly paid.

By a process of elimination it can be seen that Cook cannot possibly be held liable to plaintiffs under any circumstance.

It is clear that by purchasing the bills of lading which incorporated all the terms and conditions of

the C/P between Cook and Austin, plaintiffs assumed the duty of discharging the vessel (paragraph 10 C/P). Therefore, any loss which may have occurred at Formosa by reason of the discharging is for plaintiffs' account.

Now, if Cook is not liable for loss occurring at discharge can it be held liable for loss occurring during loading or during the voyage?

It is clear that if a conforming amount of cargo was delivered to the vessel and was lost during the voyage, by virtue of COGSA incorporated in the C/P, the carrier Austin is liable for this loss in the absence of any defenses thereto. Cook is certainly not.

Now, if Cook in actuality did fail to provide Austin with a sufficient amount of cargo, it would seem to appear that only in the event would Cook become liable to plaintiffs. But, since Austin issued Bills of Lading for the full amount of cargo, and plaintiffs were required only to pay according to the tenor of those bills i.e. for the bill of lading quantities, if insufficient cargo was in fact loaded, the cause of the loss is certainly not Cook's failure to deliver but Austin's negligence in issuing faulty bills.

The contract of sale which is the subject matter of this action was by plaintiffs own admission fully performed. The contract called only for delivery of between 13,300 M/T and 14,700 M/T of soybeans, (14,000 M/T +/- 5%). Plaintiffs

allege that something in excess of 14,300 M/T were received in good order and condition. The cause of plaintiffs loss herein is not that the contract of sale was breached but that the amount of cargo received was some 254 M/T less than it had paid for according to the tenor of the bills, bills issued not by Cook but by Austin who was also in sole control of the loading operation. If the allegedly missing cargo was not delivered by Cook to Austin, liability therefore lies with Austin, not Cook unless, of course, a letter of indemnity from Cook to Austin for shortage was executed. Again this mythical letter has been neither alleged nor produced. If the cargo was delivered to Austin and then lost during loading, Austin is liable as per the C/P clause 9.

It is respectfully submitted that all causes of action against Cook by both plaintiff and third party plaintiff be summarily dismissed.

Respectfully submitted,

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Third-Party Defendant
96 Fulton Street
New York, New York 10038

Of Counsel:
Frederick W. Meeker

AMENDED THIRD PARTY COMPLAINT BY AUSTIN NAVIGATION CORP. LTD. AGAINST COOK INDUSTRIES, INC. (Filed January 30, 1975) 314a

(pp. 314a-317a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHU[illegible]MA OIL MILL CO. LTD., et al.	
Plaintiffs,	AMENDED THIRD-PARTY COMPLAINT
- against -	
M/S "NORMA", her engines, etc.,	73 CIV. 250 (CES)
- and against -	
AUSTIN NAVIGATION CORP. LTD.,	
Defendant and Third-Party Plaintiff,	
- against -	
COOK INDUSTRIES INC.,	
Third-Party Defendant	

JAN 30 9 18 AM '75
U.S. DISTRICT COURT
S.D. OF N.Y.

Defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., by its attorneys DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, for its Amended Third-Party Complaint against the third-party defendant herein, respectfully shows to this Court and alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. At all times hereinafter mentioned, third-party plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of Liberia, and was the owner of the MS "NORMA".

3. At all times hereinafter mentioned, third-party defendant was and now is a corporation duly organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 60 Broadway, New York, N.Y.

4. That prior to the times mentioned in the Complaint, the MS "NORMA" was chartered to the third-party defendant, and at all times hereinafter mentioned and at the times mentioned in the Complaint, the said charter party dated at New York, December 16, 1971, was in full force and effect.

5. That under the provisions of said charter, the cargo was to be discharged free of risk and expense to the vessel.

6. That at all times mentioned in the Complaint, the whole reach of the vessel's Nos. 1,3 and 5 holds were placed at the third-party defendant's disposal and under its control.

7. That on or about January 16, 1973, the plaintiffs herein filed a Complaint in this Court against the above-named defendant and third-party plaintiff. The Complaint alleges that certain shipments of yellow soybeans shipped on board the MS "NORMA" in January, 1972 at Louisiana were subsequently delivered at Kaohsiung, Taiwan. A copy of the Complaint is annexed hereto, marked Exhibit A.

8. Defendant and third-party plaintiff has performed all of the terms and conditions of the aforesaid charter party on its part to be performed.

9. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the breach of the provisions of the Charter Party on the part of the third-party defendant, its agents or servants.

10. That by reason of the aforesaid, if there should be any liability imposed upon the defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursements of this action, including attorneys' fees.

AS AND FOR A SECOND CAUSE OF ACTION

11. Repeats and realleges each and every preceding Paragraph of this Amended Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

12. That if the plaintiffs' cargo suffered any damage or loss as alleged in the Complaint, which is denied, such damage or loss was occasioned solely by the fault and neglect of, and was attributable to, the third-party defendant, its agents or servants, and not to the defendant and third-party plaintiff.

13. That by reason of the aforesaid, if there should be any liability imposed upon defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursements of this action, including attorneys' fees, and if said defendant and third-party plaintiff is held responsible for the damages sustained by the plaintiffs herein, such liability will have been brought about and was caused wholly as a result of the primary and active negligence or fault of the third-party defendant, its agents or employees, without any fault on the part of defendant and third-party plaintiff contributing thereto.

AS AND FOR A THIRD CAUSE OF ACTION

14. Repeats and realleges each and every preceding Paragraph of this Amended Third-Party Complaint with the same force and effect as if herein repeated and set forth at length.

15. In addition to being a charterer of the "NORMA" at all material times, the third-party defendant was also the shipper of the cargo in suit and was designated as shipper in the covering bills of lading.

16. The U.S. Carriage of Goods by Sea Act, 1936, was of its own force and effect applicable to the bills of lading and cargo in suit.

17. Said Act provided, in part, as follows:

> "(5) The shipper [Cook] shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the . . . quantity, and weight . . .; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars . . ."

18. That if the plaintiffs' cargo suffered any loss or damage as alleged in the Complaint, which is denied, such loss or damage was occasioned solely by the failure of the third-party defendant, as shipper, its agents or servants, to furnish cargo of the quantity and weight specified in the bills of lading.

19. That by reason of the aforesaid, if there should be any liability imposed upon the defendant and third-party plaintiff, the third-party defendant is liable over to said defendant and third-party plaintiff for the amount of any such liability, together with the costs and disbursments of this action, including attorneys' fees.

WHEREFORE, defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., demands judgment against third-party defendant COOK INDUSTRIES, INC. for any sum that may be recovered against it, together with the costs and disbursements of this action, including attorneys' fees, and for such other further or different relief as to the Court may be just and proper.

Dated: New York, N.Y.
January 28, 1974.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & CIUFFETA
Attorneys for Defendant and Third-Party Plaintiff

By: Peter J. Zambito
A Member of the Firm

ANSWER OF DEFENDANT AND THIRD-PARTY PLAINTIFF TO REQUESTS FOR ADMISSIONS BY COOK INDUSTRIES, INC. (Filed February 1, 1974)
(pp. 318a-320a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
Feb 1 9 07 AM '74

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

MS "NORMA", her engines,, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

ANSWERS TO REQUEST FOR ADMISSIONS

73 CIV. 250 (CES)

Defendant and third-party plaintiff by its attorneys DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, for its Answers to the Request for Admissions served by third-party defendant, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at trial, alleges upon information and belief as follows:

1. Answering Request for Admissions No. 1, denies that the document annexed thereto as Exhibit A is a true and complete and/or genuine copy of the charter party entered into between the Austin Navigation Corp. Ltd. and Cook Industries and denies the remaining allegations thereof.

2. Answering Request for Admissions No. 2, defendant and third-party plaintiff did not weigh the cargo in

question and, while having received copies of the certificates marked B-1 through B-8, can neither admit nor deny the accuracy of the contents of said certificates at this time.

3. Answering Request for Admissions No. 3, admits only that the invoices marked Exhibits C-1 through C-4 were rendered to "S/S NORMA AND/OR OWNERS AND/OR GULF COAST SHIPPING CORP., AS AGENTS", but can neither admit nor deny the accuracy of the content of said invoices.

4. Answering Request for Admissions No. 4, denies that the documents annexed thereto as Exhibits D-1 through D-16 are true and complete copies of the original bills of lading issued for the cargo in suit. It is to be noted also that the said Exhibits are in many instances illegible and cut off on the right-hand side.

Dated: New York, N. Y.
January 29, 1974.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA

Attorneys for Defendant and
Third-Party Plaintiff

BY: _____
A Member of the Firm

576 Fifth Avenue
New York, N. Y. 10036

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER J. ZAMBITO, being duly sworn, deposes and says:

That he is an attorney and member of the firm of DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, attorneys for defendant and third-party plaintiff in the within action.

That he has read the foregoing ANSWERS TO REQUEST FOR ADMISSIONS and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true. The reason this verification is made by deponent and not by the defendant and third-party plaintiff is because said defendant and third-party plaintiff is a foreign corporation, none of whose officers are located within this District.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are books, records and documents in deponent's possession.

PETER J. ZAMBITO

Sworn to before me this
31st day of January, 1974.

Notary Public

VINCENT J. BARRA
Notary Public, State of New York
No. 31 [illegible]
Qualified in New York County
Commission Expires March 30, 1975

RECEIVED
CHAMBERS
JUDGE STEWART
3/1/74

AFFIDAVIT OF DANIEL SULLIVAN IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT (pp. 321a-326a) WITH EXHIBIT ANNEXED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI HA OIL MILL CO. LTD., et al,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.,

-and-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250 (CES)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

BEST COPY AVAILABLE

DANIEL A. SULLIVAN, being duly sworn, deposes and says that he is a member of the firm of BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiffs in the within action, and submits this affidavit in opposition to the motion of COOK INDUSTRIES INC. for summary judgment dismissing plaintiffs' complaint and the third-party complaint of defendant AUSTIN NAVIGATION CORP. LTD.

These actions were brought by plaintiffs for the shortage of 254 metric tons of soybeans for which plaintiffs paid but never received. It is plaintiffs' position that either the full quantity of the cargo was not shipped by the seller COOK INDUSTRIES INC. or that it was lost by the carrier AUSTIN NAVIGATION CORP. LTD.

COOK'S motion is in 2 parts; the first directed against AUSTIN and the second against plaintiffs. As plaintiffs were merely the purchasers and consignees of the cargo they did not enter into the arrangements between COOK and AUSTIN for the carriage of the cargo to Formosa. The terms of the sale of the cargo were "C. & F. Formosa" and accordingly it was the duty of COOK to provide for the transportation. Although plaintiffs did not arrange for the transportation, they do not agree with the following statements appearing at pages 6 and 7 of COOK'S memorandum:

> p. 7: "If the allegedly missing cargo was not delivered by Cook to Austin, liability therefore lies with Austin * * *."
>
> p. 6: "* * * if insufficient cargo was in fact loaded, the cause of the loss is certainly not Cook's failure to deliver but Austin's negligence in issuing faulty bills."

It is respectfully submitted that such allegations cannot be correct statements of law. It would mean that a bailee who was paid for 14,700 tons of cargo could deliver [illegible] tons and then tell the carrier that the carrier was liable for the shortage. That there was a shortage of 254.230 tons is evidenced by the annexed copy of International Surveyor Co. survey report.

COOK'S motion to dismiss plaintiffs' complaint is based upon a false premise. This appears in the following statement of the memorandum in support of the motion: to

> "The contract of sale which is the subject of this action was by plaintiffs own admission fully performed."

Certainly plaintiffs have made no such admission. If the contract had been fully performed there would be no law suit. The contract provided for the sale of 14,000 M/T plus or minus 5% and COOK claims that it delivered 14,700 tons to the vessel but plaintiffs only received 14,445 tons. Certainly if COOK did not deliver the cargo for which it was paid then the contract was not fully performed.

COOK'S motion is based upon the assumption that the weights stated on the weight certificates were actually delivered to the vessel. But that is the very issue to be determined by the Court in this action. If COOK delivered the correct amount of cargo to the vessel then it is not liable for any loss which occurred thereafter. On the other hand, if 254 M/T were short-shipped then COOK is liable for the shortage for which it was paid but had not delivered. It is respectfully submitted that this simple issue of fact is the issue to be decided in this suit.

It is a fundamental principle that summary judgment will not be granted where there is a valid issue of fact to be determined by the Court.

Apart from the presence of the issue of fact, the motion should be denied also because the moving affidavit does not comply with Rule 56 of the Federal Rules of Civil Procedure in that it was not based upon the "personal knowledge" of the affiant. The attorney for COOK obviously did not have personal knowledge of the amount of cargo delivered to the "NORMA".

BEST COPY AVAILABLE

WHEREFORE, plaintiffs respectfully submit that the motion of COOK INDUSTRIES INC. for summary judgment be denied.

Dated: April 22nd 1972

Daniel A. Sullivan

Sworn to before me this

12th day of February,

1974

_____

ORIGINAL

Survey Report

國際公證有限公司

International Surveyor Co.

台北市漢口街一段八十巷十二號三樓

3rd Floor, 12, Lane 80, Han Kow Street, Taipei, Taiwan

TEL:27808

This report is issued in good faith and to the best of our knowledge and ability but without responsibility on our part.

No: ISC-72-114

Date: April 22nd 1972

COMMODITY: No.2 Yellow Soybeans in bulk.

CONSIGNEE & QUANTITY:

Shui Fa Oil Mill Co., Ltd.	1,947.750	M/Tons.
Huey Feng Oil Mill Co., Ltd.	840.000	"
Hui Shung Solvent Oil Co., Ltd.	1,307.250	"
Hsie Cheng Oil Mill Corp.	525.000	"
Heng Lung Oil Mill Co., Ltd.	3,675.000	"
Yuan Yi Oil Industry Co., Ltd.	2,625.000	"
King Tai Ih Oil Factory Co., Ltd.	2,415.000	"
King Tai Yi Trading Co., Ltd.	1,365.000	"
Total:	14,700.000	M/Tons.

UNDERWRITERS: South China Insurance Co., Ltd. Taipei

CARRIER: ex s.s. "NORMA" arrived at Kaohsiung on March 2nd 1972 from New Orleans U.S.A.

ORIGINAL

THIS IS TO CERTIFY THAT we, the undersigned Cargo Surveyors, at the request of Messrs. South China Insurance Co., Ltd., Taipei, did proceed at Wharf No. 32 & 34, Kaohsiung Harbour, Kaohsiung and on board the m.v. "NORMA" from the days March 28th through April 15th 1972, for the purpose of inspection, supervise discharging, bagging, tallying and 100% weighing of the above-mentioned cargo. Hereby we report as follows:-

DRAFT SURVEY: Draft reading was effected by us with the Chief Officer of M.V."NORMA" before and on completion of discharging. The draft reading report was attached hereunder for your reference.

STOWAGE: The Soybeans in bulk was stowed in the vessel's holds Nos. 1, 3 and 5.

CONDITION:

1. Upon openning the hatches, we found that the mildewed beans in Hatc No.3 was caused to leaked with sea water from hatch cover, so the 311 bags(or 24.880 M/T) of mildewed beans were found during discharging.
2. Hatch Nos. 1 & 5 were found to be in apparent good condition.
3. We enclosed herewith one sheet of Damage Report is signed by Chief Officer of the m.v. "NORMA".

DISCHARGING: The Soybeans in bulk were discharged by means of Grab-Bucket Machine. The bulky cargo stowed in three holds of the vessel were respectively grabed with Grab-Bucket and discharged, then bagged on the quay.

Commenced at 1830 hrs. March 28th 1972.
Completed at 0900 hrs. April 15th 1972.

Survey Report

國際公證有限公司

International Surveyor Co.

台北市漢口街一段八十巷十二號三樓

3rd Floor, 12, Lane 80, Han Kow Street, Taipei, Taiwan

TEL:27806

This report is issued in good faith and to the best of our knowledge and ability but without responsibility on our part.

No: ISC-72-114

Date: April 22nd 1972

WEIGHING: 100% weighing was effected by us at the captioned time and place. Ea and every bag was tested and well-balanced with platform scale which were constantly tested for accuracy during the weighing. A uniform net weight of 80.0 kgs. of Soybeans in bulk were bagged and weighed. The quantity is specified as follows:

Godown No.	Description	No. of Bags	Net Weight
31-2	Sound beans.	98,681 Bags.	7,894.4800 M/T.
	Mildewed beans.	301 "	24.0800 "
	Husks of Soybeans(No uniform of net weight per bag).	161 "	9.6106 "
32-2	Sound beans.	28,340 "	2,267.2000 "
34	Sound beans.	36,866 "	2,949.2800 "
	Mildewed beans.	10 "	0.8000 "
	Husks of Soybeans(No uniform of net weight per bag).	6 "	0.3194 "
Truck	Sound beans.	16,250 "	1,300.0000 "
	Total:	180,615 Bags.	14,445.7700 M/T.

COMPARISON:

a. By Weighing:

Total B/L Quantity:	14,700.000 M/T.
Total Received Soybeans:	14,445.770 "
Shortage in weight:	254.230 M/T

b. By Draft Reading:

Total B/L Quantity:	14,700.000 M/T.
Total Discharged by Draft Reading:	14,504.280 "
Shortage in weight:	195.720 M/T.

c. Total Quantity Discharged by Vessel's Draft: 14,504.280 M/T.
Total Quantity Discharged by Weighing: 14,445.770 "
Difference: 58.510 M/T

APPORTIONMENT: Unit - M/T.

Policy No.	Consignee	B/L Q'ty	Sound Beans	Mildewed Beans	Husks of Beans	Shor
MN71/34631	Shui Fa	1,947.750	1,909.452	3.297	1.315	33.
MN71/34632	Huey Feng	840.000	823.488	1.417	0.568	14.
MN71/34633	Hui Shang	1,307.250	1,281.546	2.213	0.883	22.
MN71/34634	Hsie Cheng	525.000	514.676	0.889	0.355	9.
MN71/34635	Heng Lung	3,675.000	3,602.739	6.221	2.482	63.
MN71/34636	Yuan Yi	2,625.000	2,573.385	4.443	1.774	45.
MN71/34637	King Tai Ih (Oil Factory)	2,415.000	2,367.515	4.088	1.631	41.
MN71/34638	King Tai Yi (Trading Co.)	1,365.000	1,338.159	2.312	0.922	23.
	Total:	14,700.000	14,410.960	24.880	9.930	235.

* Ratio of Shortage: 1.729456%.

* * * THE END * * *

ORIGINAL

PLAINTIFFS' MEMO OF LAW IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT (pp. 327a-331a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHUI FA OIL MILL CO. LTD., et al, Plaintiffs, -against- M/S "NORMA", her engines, etc., - and - AUSTIN NAVIGATION CORP. LTD., Defendant and Third-Party Plaintiff, -against- COOK INDUSTRIES INC., Third-Party Defendant.	73 Civ. 250 (CES)

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

The motion of COOK INDUSTRIES INC. for summary judgment dismissing plaintiffs' complaint is based upon the assumption that the cargo described in the weight certificates was in fact delivered to the "NORMA". The amount of cargo actually delivered to the vessel is the issue of fact to be decided by the Court.

It is respectfully submitted that such an issue of fact defeats a motion for summary judgment.

I

A GENUINE ISSUE OF FACT
SHOULD NOT BE DECIDED BY
A MOTION FOR SUMMARY JUDGMENT

It is a fundamental principle that issues of fact are to be decided at a trial and only questions of law are to be disposed of by motion for summary judgment.

In Doehler Metal Furniture Co. v. United States, 149 F. 2d 130, Circuit Judge Frank stated at p. 135:

> "We take this occasion to suggest that trial judges should exercise great care in granting motions for summary judgment. A litigant has a right to a trial where there is the slightest doubt as to the facts, and a denial of that right is reviewable; but refusal to grant a summary judgment is not reviewable. Such a judgment, wisely used, is a praiseworthy time-saving device. But, although prompt despatch of judicial business is a virtue, it is neither the sole nor the primary purpose for which courts have been established. Denial of a trial on disputed facts is worse than delay. Cf. Arenas v. United States, 322 U.S. 419, 429, 433, 64 S.Ct. 1090, 88 L.Ed. 1363. The district courts would do well to note that time has often been lost by reversals of summary judgments improperly entered."

In Bozant v. Bank of New York, 156 F. 2d 787, Circuit Judge Learned Hand in reversing the District Court stated, at p. 790:

"In conclusion we cannot avoid observing that the case is another mistaken effort to save time by an attempt to dispose of a complicated state of facts on motion for summary judgment. This is especially true when the plaintiff must rely for his case on what he can draw out of the defendant. Arnstein v. Porter, 2 Cir., 154 F. 2d 464. It appears to be somewhat difficult to persuade the district courts of this; but we are satisfied that it is true."

II

THE MOVING AFFIDAVIT IS DEFECTIVE BECAUSE IT WAS NOT MADE ON PERSONAL KNOWLEDGE

Rule 56 (e) of the Federal Rules of Civil Procedure contains the following requirement for affidavits submitted in support of a motion for summary judgment:

"(e) Form of Affidavits * * *

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissable in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. * * *"

The moving affidavit is that of Attorney Meeker who seeks to establish the quantity of cargo delivered by attaching Weight Certificates to his affidavit. It is clear that the attorney has no personal knowledge of the loading of the cargo and accordingly his affidavit does not comply with Rule 56 (e) F.R.C.P.

In Subin v. Goldsmith, 224 F. 2d 753, the Court of Appeals for this Circuit stated, at p. 756:

> "In support of their motion, defendants introduced four affidavits. Two of them were by defendants' lawyers; so far as they bear at all on Count V, they were not based on 'personal knowledge', and therefore do not suffice under F.R.C.P. 56 (e)."

In Antonio v. Barnes, 464 F. 2d 584, the Court of Appeals in reversing the District Court stated, at p. 586:

> "The plaintiff contends that the affidavits filed in support of the summary motion failed to conform to Rule 56 (e) * * *.
>
> * * * The absence of an affirmative showing of personal knowledge of specific facts vitiates the sufficiency of the affidavits and, accordingly, summary disposition based thereon was improper. Doza v. American National Insurance Company, 314 F 2d 230 (8 Cir. 1963); 3 Barron & Holtzoff, Federal Practice and Procedure Sec. 1237 (Wright ed. 1958). See also Arguelles v. U.S. Bulk Carriers Inc., 408 F 2d 1065, 1068 (4 Cir. 1969)."

See also Tirino v. Local 164, 282 F. Supp. 809, where the Court stated, at p. 816:

> "On a motion for summary judgment, the burden rests upon the moving party to satisfy the court that there is no triable issue of fact, 6 Moore, Federal Practice Sec. 56.15 (3) (2d ed. 1965). This burden is not met by the conclusory statements in the moving affidavits."

III

THE MOTION OF THIRD-PARTY DEFENDANT, COOK INDUSTRIES INC., SHOULD BE DENIED.

Respectfully submitted,

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiff

DANIEL A. SULLIVAN,
Of Counsel.

STATEMENT BY DEFENDANT AND THIRD-PARTY PLAINTIFF PURSUANT TO RULE 9(g) 332a (pp. 332a-333a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RECEIVED
CHAMBERS
JUDGE STEWART
3/7/74

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

MS "NORMA", her engines, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

STATEMENT PURSUANT TO RULE 9 (g)

73 CIV. 250 (CES)

The following is a statement by the defendant and third-party plaintiff, Austin Navigation Corp. Ltd. (hereinafter "Austin") of the material facts as to which there is a genuine issue to be tried. This statement is submitted in opposition to the third-party defendant's motion for summary judgment and in pursuance of Rule 9 (g) of the General Rules for the United States District Court for the Southern District of New York.

1. Austin contends that it was the third-party defendant, Cook Industries Inc. (hereinafter "Cook") who supplied the cargo to the grain elevator at the loading port, but that no evidence of the quantity of cargo furnished to the elevator has been submitted. Thus, an issue of fact is present.

2. There is a question of fact as to the actual quantity of cargo loaded on board the vessel, especially since

all cargo loaded on board was, in fact, discharged at the port of destination.

3. There is an issue of fact as to the quantity of cargo remaining in the elevator upon completion of loading from the elevator.

4. There is an issue of fact as to normal shrinkage inherent in the cargo.

Dated: New York, N. Y.
March 4, 1974.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA

Attorneys for Defendant and Third-Party Plaintiff

By: Peter J. Lambith
A Member of the Firm

576 Fifth Avenue
New York, N. Y. 10036
765-7100

AFFIDAVIT OF PETER J. ZAMBITO IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT WITH EXHIBIT (pp. 334a-341a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

MS "NORMA", her engines, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

----------x

A F F I D A V I T

73 CIV. 250 (CES)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER J. ZAMBITO, being duly sworn, deposes and says:

1. That he is an attorney and member of the firm of DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, attorneys for defendant and third-party plaintiff, Austin Navigation Corp., Ltd. (hereinafter "Austin"), and is fully familiar with the facts of the matter and all proceedings heretofore had herein.

2. That he makes this Affidavit in opposition to the motion of third-party defendant, Cook Industries, Inc. (hereinafter "Cook"), for summary judgment dismissing the Third-Party Complaint.

3. At the time the voyage in question was performed, the "NORMA" was operating under a charter party dated December 16, 1971, entered into between Austin, as Owner, and Cook, as Charterer, and the bills of lading covering the cargo in question were issued to Cook, as shipper.

4. Although the Notice of Motion is silent in such respect, it appears that counsel for Cook is moving under Rule 56 F.R.C.P. Said Rule provides, in part, as follows:

> "(e) Form of Affidavits . . . Supporting . . . affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith . . ." (emphasis added)

5. The language of Rule 56 (e) is mandatory, not permissive, and the Affidavit of Cook's counsel must, therefore, be disregarded as in contravention of the clear language of the Rule. Certainly, counsel's moving Affidavit is not based upon personal knowledge, but rather upon a review of the records (paragraph 1 of the moving Affidavit).

6. Nor is the Affidavit of Daniel X. Willis, also submitted in support of the motion, within the contemplation of subdivision (e) of Rule 56 F.R.C.P. It is based upon "personal belief" (paragraph 5), and the decisions are clear that statements in Affidavits as to opinion or belief are of no effect on a motion for summary judgment. Then, too, Exhibits D-1 through D-8, annexed to the moving Affidavit of Cook's counsel, make it clear that a "W. J. Duffy" (also referred to as "Warren Duffy") was the actual weigher, and thus the qualification in the Willis Affidavit (paragraph 5). No doubt, Mr. Duffy is the person to

whom Mr. Willis refers in paragraph 3 of his Affidavit, but no Affidavit from Mr. Duffy attends the moving papers.

7. The moving papers are further defective by reason of the fact that the papers attached to the Affidavit of Cook's counsel are neither sworn nor certified copies, as required by Rule 56 (e) F.R.C.P. Furthermore, the exhibits attached to the Affidavit of Cook's counsel, specifically exhibits C and E-1 through E-13 are not complete or true copies of the originals. The bills of lading (exhibits E-1 through E-13) are clearly marked "COPY NOT NEGOTIABLE" and represent the face side only of a bill of lading, the clause or reverse side not being attached.

No sworn or certified documents are attached to the Willis Affidavit, despite the fact that it refers to certification of the scales (paragraph 4) and to weight certificates (paragraph 5).

8. Lastly, Rule 9(g) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York provides, in part, as follows:

> "Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving part contends there is no genuine issue to be tried . . ." (emphasis added)

This provision as well has been disregarded by counsel for Cook. and, again. the language is mandatory not permissive.

9. For the above reasons alone, the motion for summary judgment must be denied.

10. Turning now to the facts, deponent submits

that there are genuine issues of fact present, and indeed the moving Affidavit of Cook's counsel creates an issue as to the quantity of No. 2 yellow soybeans in bulk which was loaded on board the SS "NORMA" at Reserve, Louisiana (paragraph 14 of Meeker Affidavit).

Obviously, when dealing with bulk cargo such as that in question, some allowance or tolerance attends the contractual quantity specified to be sold or carried. Thus, in paragraph 14 of his moving Affidavit, Cook's counsel alludes to the fact that the contract entered into between China Trade Development (apparently the purchasing agent of theplaintiffs) and Cook provided for a quantity of 14,000 metric tons, 5% more or less (exhibits A and C to Meeker Affidavit).

Cook's counsel goes even further in paragraph 14 of his moving Affidavit by alleging that "if any shortage was listed at outturn, it is either the fault of the carrier for fraudulent bills of lading or the receiver for negligent discharge". (emphasis added) The reference to so-called "fraudulent bills of lading" can only be interpreted in one manner, namely, that the bills of lading reflect a greater quantity thereon than actually loaded to the vessel.

In passing, it is to be noted that the quantity allegedly loaded to the vessel and reflected in the bills of lading was furnished by Cook, the shipper named in the bill of lading, or by its agents. Any fraud which may be present originated, therefore, with Cook or its agents. Austin's stevedore merely loaded, stowed and trimmed the cargo; it did not weigh it.

Thus, in two (2) instances in his moving Affidavit, Cook's counsel alludes to the possibility that a quantity less

than specified in the bills of lading could have been loaded to the vessel, and it is important to note that the grain in question was supplied by Cook to Bayside Elevator Co. at Reserve, Louisiana for loading (paragraph 9 of the Meeker Affidavit), but that no evidence of the quantity supplied or of the quantity remaining in the grain elevator on completion of loading attends the moving papers.

11. Deponent submits that there is a genuine issue of fact present as to the quantity loaded on board the vessel.

12. The pertinent provisions of the charter party (exhibit A to the Meeker Affidavit) state, in part, as follows:

> "9. Cargo to be loaded according to berth terms . . ."
>
> "10. Cargo to be discharged by Receivers' stevedores free of risk and expense to the vessel . . ."

Deponent submits that while Austin retained and paid the loading stevedore, the grain elevator did the actual work of loading, and that it was not the stevedore's function to weigh the cargo.

While the loading was to be performed on berth terms, such was not the case with regard to the discharge, as contended in the Memorandum submitted in support of the motion, at page 3. The discharge was to be performed "free of risk and expense to the vessel", meaning Austin as her Owner, and it was, as between Austin, as Owner, and Cook, as Charterer, the latter's responsibility to see that the discharge was properly carried out by the Receivers since the Receivers were not a signatory to the charter party. A further issue of fact is present with regard to the quantity delivered at destination.

13. The cargo in question was loaded in Nos. 1, 3 and 5 holds, as per stowage plan annexed hereto as Exhibit 1. After leaving the loading port, the vessel proceeded to Durban, South Africa, where she loaded in Nos. 2, 4 and 6 holds. The holds in which the soyabean meal in question was loaded were not disturbed. After completion of loading at Durban, the vessel proceeded to Kaohsiung, where she discharged her soyabean meal cargo. Deponent has examined the vessel's deck log, and the statements made in this paragraph are confirmed by said log. Should the Court wish to examine said deck log in connection with the motion, deponent shall, on request, furnish same promptly.

These facts demonstrate that all cargo loaded to Nos. 1, 3 and 5 holds (plaintiffs' cargo) was, in fact, discharged at Kaohsiung. Only three (3) possibilities, or combinations thereof, exist to account for the shortage claimed, namely, (a) the vessel received less than the bill of lading quantity, (b) shrinkage, which is an inherent vice of the goods, occurred and/or (c) the plaintiffs' (Receivers) stevedore discharged a greater quantity than the discharging records reflect. And these are the issues of fact which are present.

14. The Memorandum submitted in support of the motion for summary judgment misstates the law with regard to estoppel and cites a decision, Spanish-American Skin Company v. M.S. Ferngulf, 1956 A.M.C. 2238 (143 F. Supp. 345), which is not in point insofar as Cook, as shipper/charterer, is concerned. That decision holds that reservations in a bill of lading as to number, quantity or weight are ineffective as against a bona fide purchaser for value of the bill of lading, citing Section 1303(3) and (4) of Title 46 U. S. Code (Carriage of Goods by Sea Act, 1936).

That decision was arrirmed by the United States Court of Appeals for the Second Circuit, reported at 242 F.2d. 551, 1957 A.M.C. 611. The Circuit Court opinion also makes reference to Section 1303(5) of COGSA, which provides, in part, as follows:

> "(5) The shipper [Cook] shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the . . . quantity, and weight . . .; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars . . ."

15. Lastly, deponent reserves, with the Court's permission, the right to secure and submit Affidavits on personal knowledge should Cook's counsel now seek to submit further Affidavits in conformity with Rule 56(e). In such regard, deponent relies upon Rule 56(f), in that the persons who were Master and Chief Officer on the voyage in question are not presently in the United States nor expected here in the near future and, further, that Affidavits from them must come from abroad.

16. Accordingly, on either the ground that the moving papers are not in conformity with Rule 56 F.R.C.P. and Rule 9(g) of the Local Rules of this Court or on the ground that genuine issues of fact are present, the motion of third-party defendant Cook must be denied.

WHEREFORE, deponent prays that the motion of third-party defendant, Cook Industries Inc., for summary judgment against the third-party plaintiff should be in all respects denied.

PETER J. ZAMBITO

Sworn to before me this
4th day of March, 1974.

Notary Public

ROBERT M. PELLEGRINO
Notary Public, State of New York
No. 30-9052195
Qualified in Nassau County

S NORMA

GULF COAST SHIPPING CORP.
406 SANLIN BUILDING
NEW ORLEANS, LA. 70130

ASTER: T. Z. LIN
AILED FROM: RESERVE, LA
AILED FOR: KAOHSIUNG, TAIWAN
ATE: 12-5-71

CARGO: 14468.5 GROSS TONS
BUNKERS: 1972 " "
WATER 320 " "
STORES: " "
FITTINGS: " "
_____: " "
TOTAL 16760.5 GROSS TONS

DRAFT FWD. 23 FT. 00 IN.
DRAFT AFT. 27 FT. 00 IN.
MEAN DRAFT 25 FT. 00 IN.
ALLOWANCE FRESH FT. IN.
DRAFT IN SALT FT. IN.

6	5	4	3	2	1
	BAYSIDE 5526 L/T NO. 2 YELLOW SOYBEANS		BAYSIDE 8284 L/T NO. 2 YELLOW SOYBEANS		341a (SLACK) BAYSIDE NO. 2 YELLOW SOYBEANS 658.5 L/T

DEFENDANT AND THIRD-PARTY PLAINTIFF'S MEMO OF LAW IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT filed Mar 5, '74
(pp. 342a-347a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

MS "NORMA", her engines, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 CIV. 250 (CES)

MEMORANDUM OF LAW
OF DEFENDANT and THIRD-PARTY PLAINTIFF
IN OPPOSITION TO THIRD-PARTY DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

STATEMENT

This Memorandum is submitted in opposition to the motion of third-party defendant, Cook Industries Inc. (hereinafter "Cook"), for summary judgment dismissing the Third-Party Complaint.

The Complaint seeks damages in the sum of $36,000, primarily for alleged shortage to shipments of No. 2

yellow soybeans in bulk which were transported on board the SS "NORMA" from Reserve, Louisiana to Kaohsiung, Taiwan under various bills of lading in January/March, 1972.

The Affidavit of Peter J. Zambito, attorney for defendant and third-party plaintiff and Statement pursuant to Rule 9(g) of the local rules sets forth the reasons why the motion should be denied.

FIRST POINT

THE MOTION PAPERS DO NOT CONFORM TO THE MANDATORY REQUIREMENTS OF RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND ON THAT SOLE GROUND MUST BE DENIED.

Rule 56 (e) F.R.C.P. provides, in part, as follows:

> "(e) Form of Affidavits . . . Supporting . . . affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith . . ." (emphasis added)

"Shall", within subdivision (e) of Rule 56 F.R.C.P., providing that Affidavits filed in support of summary judgment "shall" be made on personal knowledge, is mandatory and requires that the Affidavit state matters personally known to affiant. Sartor v. Arkansas Natural Gas Corporation, 64 S.Ct. 724, 321 U. S. 620, 88 L.Ed. 967,

reh. den. 64 S.Ct. 941, 322 U. S. 767, 88 L.Ed. 1593; Peter Pan Fabrics, Inc. v. Dixon Textile Corp., 280 F.2d. 800 (C.A. 2, 1960).

Not only must the supporting Affidavit be made on the personal knowledge of the affiant, it must show that the affiant possesses the knowledge asserted. Doza v. American Nat. Ins. Co., 314 F.2d. 230 (C.A. 8, 1963).

And where documents attached as exhibits are not sworn to or certified and where made by an attorney who does not have or disclose personal knowledge of the facts the supporting Affidavit does not comply with Rule 56 (e) F.R.C.P. Henkin v. Rockower Bros., Inc., 259 F. Supp. 202 (D.C.N.Y., 1966).

Where the Affidavit accompanying a motion for summary judgment is not made on personal knowledge, it will be disregarded. Chan Wing Cheung v. Hamilton, 298 F.2d. 459 (C.A. 1, 1962); Duplessis v. Hullinghorst, 255 So. 2d. 236 (La. App., 1971).

It can hardly be contended that the Affidavit of Cook's counsel is based upon personal knowledge of the facts, nor is such contention even made in the Affidavit. Thus, it must be disregarded.

The Affidavit of Daniel X. Willis, also submitted in support of the motion, is based upon "personal belief", and the law is clear that statements in Affidavits as to opinion and belief are of no effect on a motion for

summary judgment, Ellis & Co. v. Association of American Railroads, 190 F. Supp. 10 (D.C.D.C., 1960), and are not admissible if based upon opinions or belief, no matter how sincere. Clark v. Hancock, 45 F.R.D. 512 (D.C.Ga., 1968); Avery v. Norfolk & W. Ry. Co., 52 F.R.D. 356 (D.C.Ohio, 1971).

The Rule clearly contemplates that evidentiary Affidavits on a motion for summary judgment must be made on personal knowledge, and hearsay testimony and opinion testimony, such as has been submitted here, that would not be admissible at trial may not properly be set forth in such Affidavits. DePinto v. Provident Sec. Life Ins. Co., 374 F.2d. 50 (C.A. 9, 1967).

Accordingly, both the Meeker and Willis Affidavits contravene the clear language of Rule 56 F.R.C.P. and must, therefore, be disregarded.

SECOND POINT

THE MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED SINCE MOVANT HAS FAILED TO SHOW THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT.

Under Rule 56 (c) F.R.C.P., summary judgment shall be rendered forthwith:

> ". . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law . . ."

The opposing Affidavit and Statement pursuant to local Rule 9(g) clearly set forth the material facts which are still at issue. No depositions or Answers to Interrogatories have been conducted or filed. The moving party has the burden of clearly demonstrating that there is no genuine issue of fact, Croley v. Matson Navigation Company, et al., 434 F.2d. 13, 1971 A.M.C. 382 (C.A. 5); Liberty Leasing Co. v. Hillsum Sales Corp., 380 F.2d. 1013, 1014 (C.A. 5, 1967); National Screen Service Corp. v. Poster Exchange, Inc., 305 F.2d. 647, 651 (C.A. 5, 1962); K. A. Cockrell v. A. L. Mechling Barge Lines, Inc., 192 F. Supp. 622 (D.C., S.D.Tex., 1961); 6 Moore's Federal Practice, 2nd Ed., 1953, §56.27 (1) p. 2364, and the defendant and third-party plaintiff here, as the party opposing the motion, must be given the benefit of all reasonable doubt in determining whether a genuine fact issue exists, India Supply Mission v. S.S. OVERSEAS JOYCE, 246 F. Supp. 536 (S.D.N.Y., 1965); United States v. Farmers Mutual Ins. Assn., etc., 288 F.2d. 560, 562 (C.A. 8, 1961); Chesepeake & Ohio Ry. Co. v. International Harvester Co., 272 F.2d. 139, 142 (C.A. 7, 1959); Heyward v. Public Housing Administration, 238 F.2d. 689, 696 (C.A. 5, 1956); Harney v. Great Atlantic & Pacific Tea Co., 388 F.2d. 123 (C.A. 5, 1968); 3 W. Barron and A. Holtzoff, Federal Practice and Procedure, §1235, at pp. 139, 140 (Wright Ed., 1958), it is submitted that this motion by the third-party defendant should be denied.

The movant's papers should be much more carefully scrutinized than those of the opposing party and all doubts resolved against the movant, K. A. Cockrell v. A. L. Mechling Barge Lines, Inc., supra; 6 Moore's Federal Practice, 2nd Ed., 1953, supra; Harvey v. Great Atlantic & Pacific Tea Co., supra; Croley v. Matson Navigation Company, et al., supra; 3 W. Barron and A. Holtzoff, Federal Practice and Procedure, supra.

Where there is even the slightest trace of a factual issue, a trial must be ordered, Purofied Down Products Corp. v. Travelers Fire Ins. Co., 171 F. Supp. 399 (S.D.N.Y., 1959); Doehler Metal Furniture Co. v. United States, 149 F.2d., 130 (C.A. 2, 1945). And here, the moving Affidavit itself creates issues of fact.

CONCLUSION

THIRD-PARTY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AGAINST THE DEFENDANT AND THIRD-PARTY PLAINTIFF SHOULD IN ALL RESPECTS BE DENIED.

Respectfully submitted,

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA
Attorneys for Defendant and Third-Party Plaintiff
576 Fifth Avenue
New York, N. Y. 10036

PETER J. ZAMBITO,
Of Counsel

JUDGE STEWART

STATEMENT OF PLAINTIFF PURSUANT TO RULE 9(g) (pp. 348a-349a)

RECEIVED
CHAMBERS
JUDGE STEWART
3/7/74

U.S. DISTRICT COURT
FILED
MAR 6 1974
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and
Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250
(CES)

STATEMENT PURSUANT
TO RULE 9 (g)

Plaintiffs herein contend that there is a genuine issue of fact as to the actual amount of cargo delivered by Cook Industries Inc. to the vessel "NORMA" at Reserve, La., in January 1972.

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By _____
A Member of the Firm
Office & P. O. Address
99 John Street
New York, New York 10038
Tel.: 732-4646

TO:

HILL, RIVKINS, McGOWAN & CAREY
Attorneys for Cook Industries Inc.
96 Fulton Street
New York, N. Y. 10038

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA
Attorneys for Austin Navigation Corp. Ltd.
576 Fifth Avenue
New York, N. Y. 10036

BEST COPY AVAILABLE

DECISION BY JUDGE STEWART DENYING MOTION FOR SUMMARY JUDGMENT
(Filed October 10, 1974) (pp. 350a-352a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
OCT 10 1974
S.D. OF N.Y.

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.

-and-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and
Third-Party Plaintiff,

-against-

COOK INDUSTRIES, INC.,

Third-Party Defendant.

73 Civ. 250

FILED
OCT 10 1974

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

This is a breach of contract action brought by various Taiwanese corporations against the M/S Norma, her owner, the Austin Navigation Corp. Ltd., and Cook Industries, Inc., an exporting firm, alleging a shortage of some 254 metric tons of soybeans in a 1972 shipment of soybeans from Louisiana to Taiwan. Austin Navigation has filed a third-party complaint against Cook. Cook has moved to dismiss the action by plaintiffs and the third-party complaint by Austin Navigation on the grounds that no substantial questions of law or fact are in issue. Though Cook does

not state that this is a summary judgment motion, we will assume that it is.[1/]

Both plaintiffs and Austin Navigation contend that summary judgment is not warranted in the instant case because of (1) disputed questions of fact, including specifically the weight of the soybeans loaded onto the M/S Norma in Louisiana; and (2) Cook's failure to comply with Federal Rule 56(e), requiring affidavits in summary judgment motions to be based on "personal knowledge."

Since we agree that defendant and third-party plaintiff Cook has failed to comply with the requirements of Rule 56(e), we deny its motion for summary judgment. Consequently, we need not consider whether there are "any genuine issue(s) as to any material fact [or] that the moving party is entitled to judgment as a matter of law," as is required by Rule 56(c).

As indicated, Rule 56(e) requires that "(s)upporting ... affidavi s shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show

---

1/ Moreover, we note that movant Cook has failed to comply with Rule 9(g) of the General Rules of the United States District Courts for the Southern and Eastern Districts of New York, requiring that the moving party annex to the notice of motion for summary judgment "a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried..."

affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith..." Here, Cook moves for summary judgment on the basis of affidavits by its attorney Frederick W. Meeker, one Daniel X. Willis, and supporting documents. Clearly this is insufficient. The Second Circuit has held that two attorneys' affidavits "were not based on 'personal knowledge', and therefore do not suffice under F.R.C.P. 56(e)." Subin v. Goldsmith, 224 F.2d 753, 756 (2d Cir. 1955). Accord, Antonio v. Barnes, 464 F.2d 584 (9th Cir. 1972). Since the primary issue in this case appears to be the weight of the soybeans when they were loaded onto the M/S Norma, the affidavits of Messrs. Meeker and Willis are not sufficient, since they were undoubtedly not present when the soybeans were weighed and loaded.

Cook's motion for summary judgment is denied for the reasons stated.

SO ORDERED.

Charles E. Stewart, Jr.
United States District Judge

Dated: New York, N. Y.
October 9, 1974.

NOTICE BY DEFENDANT AND THIRD-PARTY PLAINTIFF TO TAKE DEPOSITION OF COOK INDUSTRIES, INC. (Filed October 22, 1974) (pp. 353a-354a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al.

Plaintiffs,

- against -

M/S "NORMA", her engines, etc.,

- and against -

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

- against -

COOK INDUSTRIES INC.,

Third-Party Defendant.

NOTICE OF EXAMINATION BEFORE TRIAL

73 CIV. 250 (CES)

FILED
U.S. DISTRICT COURT
OCT 22 2 39 PM '74
S.D. OF N.Y.

S I R S :

PLEASE TAKE NOTICE that the defendant, AUSTIN NAVIGATION CORP. LTD., will take the deposition upon oral examination of the Third-Party Defendant, Cook Industries Inc., by its President, Vice President or other officer, managing agent or employee having knowledge of the facts set forth in the pleadings filed herein, pursuant to the Federal Rules of Civil Procedure, Rule 26 et seq., before a Notary Public duly commissioned for the County of New York, or before some other person duly qualified, at the offices of the undersigned, 576 Fifth Avenue, Fifth Floor, New York, N.Y. 10036 on the 19th day of November at 2:00 P.M., and that you are required to produce said witness at the time and place specified for said examination.

PLEASE TAKE FURTHER NOTICE, that you are hereby required to produce the aforesaid person or persons at the

aforesaid time and place, together with all books, records and documents pertaining to the shipment described in the Complaint.

Dated: New York, New York
October 21, 1974

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA

Attorneys for Austin Navigation
Corporation

BY: Peter J. Lambert
A Member of the Firm

TO: Bigham Englar, Jones & Houston
Attorneys for Plaintiffs
99 John Street
New York, New York 10038

Hill, Rivkins, Carey, Loesberg & O'Brien
Attorneys for Cook Industries Inc.
96 Fulton Street
New York, New York 10038

ANSWER OF PLAINTIFF TO INTERROGATORIES OF DEFENDANT AND THIRD PARTY PLAINTIFF (Filed October 25, 1974)

(pp. 355a-358a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SHUI FA OIL MILL CO. LTD., et al,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250 (CES)

ANSWERS TO INTERROGATORIES

- X

U.S. DIST. CT. S.D.N.Y. OCT 25 10 29 AM '74

PLAINTIFFS' ANSWERS TO INTERROGATORIES

Plaintiffs answering interrogatories propounded by defendant and third-party plaintiff, allege:

1. A copy of one of the bills of lading is attached hereto.

2. Plaintiffs claim that 24.88 metric tons of soy beans were damaged by seawater and that there was a shortage of 254.230 metric tons. Plaintiffs do not know how or when the shortage and damage took place except that it occurred during the voyage on the M/S "NORMA".

3. The shortage of 254.230 M/T is computed at $127.65 per M/T or $32,452.46 and the damaged 24.88 M/T at $127.65 or $3,175.93 for a total of $35,628.39.

4. The shipments were received, as described in the Survey Report of International Surveyor Co., at wharf Nos. 32 and 34, Kaohsiung Harbor from the M/S "NORMA" from March 28 to April 15, 1972.

5. Plaintiffs acquired title upon purchase of the cargo from Cook Industries Inc. and delivery to the M/S "NORMA".

6. At this time plaintiffs do not know whether the vessel was unseaworthy.

7. Plaintiffs claim that defendant and third-party plaintiff was negligent in that it failed to properly care for plaintiffs cargo.

8. (a) The cargo was surveyed by International Surveyor Co. at wharf Nos. 32 and 34, Kaohsiung Harbor between March 28 and April 15, 1972.

(b) South China Insurance Co. Ltd.

(c), (d) and (e) As per attached survey report.

9. Copies of invoices attached.

10. $35,628.39.

(a) Paid on or about February 5, 1972.

(b) No.

11. The claims are based upon C. & F. Kaohsiung price of $127.65 per M/T as per attached invoices.

12. The cargo was discharged from the vessel by stevedore hired and paid by the Kaohsiung Port Authority, not by the plaintiffs, and no relationship existed between the stevedore and plaintiffs.

13. Plaintiffs have no information concerning a normal shrinkage.

14. The following vessels arrived at Kaohsiung in 1970 from United States ports: MINLLY; ARANETA MA-AO; JEANNIE; ISLAND SRUPPER; UNION COMPANION; EVER PEACE.

The following vessels arrived at Kaohsiung in 1971 from United States ports: CHUNGKING VICTORY; BACOLOD; UNION FRIENDSHIP; HAI HSIN; HAI CHIEN; FRANCES.

15. Plaintiffs have no knowledge of shipments of No. 2 yellow soybeans imported from the United States since the voyage in question.

16. The cargo was discharged from March 28 to April 15, 1972 by means of grab buckets and bagged on the quay.

17. The cargo was weighed immediately upon discharge by use of platform scale which was constantly tested for accuracy during the weighing.

18. The cargo was bagged on the quay before weighing immediately upon discharge.

19. All the vessel's holds were swept by the stevedores hired by the Port Authority under supervision

of surveyors, International Surveyor Co. The sweepings were normally good and were discharged for apportionment to each consignee.

20. The vessel's holds were empty of plaintiffs' cargo.

21. No.

22. There are no statements.

23. There are no documents other than those identified in these answers.

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By _____
A Member of the Firm
Office & P. O. Address
99 John Street
New York, N. Y. 10038
Tel.: 732-4646

TO:

DOUGHERTY, RYAN, MAHONEY,
PELLEGRINO & GIUFFRA
Attorneys for Defendant
576 Fifth Avenue
New York, N. Y. 10036

LETTER BY ATTORNEYS FOR DEFENDANT AND THIRD PARTY PLAINTIFF TO JUSTICE STEWART REQUESTING A CONFERENCE (pp. 359a-360a)

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA
Counsellors at Law
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LAWRENCE J. MAHONEY
ROBERT M. PELLEGRINO
[illegible] GIUFFRA
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VINCENT J. BARRA

THOMAS H. DOUGHERTY
1944-1954

AREA CODE 212
TEL 765 7100

CABLE ADDRESS
DORYMAY

RCA TELEX
235906

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JUDGE STEWART

December 30, 1974 DEC 31 1974

Honorable Charles E. Stewart
United States District Court
Southern District of New York
U.S. Courthouse
40 Centre Street - Foley Square
New York, New York 10007

RE: SHUI FA OIL MILL CO. LTD.,
et al. v. MS "NORMA", etc.,
et al. - 73 CIV. 250 (CES)
Our File 5022

Sir:

We represent the defendant and third-party plaintiff shipowner in the captioned litigation.

The purpose of this letter is to request a conference to establish guidelines for further discovery herein, for the reasons hereinafter expressed.

The plaintiffs, their underwriters and the defendant and third-party plaintiff are all Taiwanese companies.

The cargo in suit was loaded at Reserve, Louisiana and was carried directly to Kaohsiung. The loading records reflect that the full bills of lading quantities were loaded to the vessel, and the discharging records and plaintiffs' Answers to Interrogatories reflect that the vessel's holds concerned were empty of plaintiffs' cargo upon completion of discharge. Nevertheless, a shortage of 254.230 metric tons of bulk soybeans is claimed.

Accordingly, we feel that since plaintiffs chose this forum, rather than Taiwan, and owing to the possible conflict in loading and discharging records we feel that oral testimony is preferable to testimony upon Written Interrogatories. Then, too, the facts give rise to a possible inherent vice of the goods in the nature of shrinkage, which we would wish to explore in person and not be relegated to written questions since we cannot anticipate

the response or frame follow-up questions. The amount involved is considerable, namely, $35,628.39.

The writing of this letter and request for a conference has been prompted by the service of Written Interrogatories addressed to plaintiffs' surveyors at Kaohsiung, the port of discharge. If need be, we can furnish a Memorandum of Law on the issue of oral testimony as opposed to testimony on Written Interrogatories.

We had previously served Notices of Oral Examination of the plaintiffs and third-party defendant, which we should also like to discuss at a conference, especially insofar as the Taiwanese plaintiffs are concerned.

We have asked plaintiffs' counsel to hold their direct Interrogatories in abeyance pending a hearing before your Honor.

Thank you for your consideration of our request.

Best wishes for the new year.

Very respectfully yours

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA

By: Peter J. Zambito

PJZ:jmf

cc./ Bigham, Englar, Jones & Houston, Esqs.
Attention: Daniel A. Sullivan, Esq.
Your File J 9021

Hill, Rivkins, Carey, Loesberg & O'Brien, Esqs.
Attention: Frederick W. Meeker, Esq.
Your File 86024

LETTER BY ATTORNEYS FOR THIRD PARTY DEFENDANT TO JUSTICE STEWART RE: STIPULATIONS OF FACT

LAW OFFICES
OF
HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
96 FULTON STREET
AT WILLIAM
NEW YORK, N.Y. 10038

TELEPHONE (212) 233-6171
TELEX 12-7804
12-7860
CABLE ADDRESS "WILMOTH"

ROBERT E. HILL (1894-1971)
GREGORY S. RIVKINS (1897-1961)

J. EDWIN CAREY
ALAN S. LOESBERG
FRANCIS J. O'BRIEN
LEO P. CAPPELLETTI
MARTIN B. MULROY
VINCENT J. RYAN
RAYMOND P. HAYDEN
ANDREW R. COLMANT
DONALD M. BURKE
JAMES M. HASTIE
ALLAN B. LITZ

THOMAS D. TOY
PETER W. FLANAGAN
ROBERT J. RYNIKER
FREDERICK W. MEEKER
JOSEPH M. MANGINO
RICHARD H. WEBBER
CASPAR F. EWIG
ROBERT E. DALEY
BRUCE J. HECTOR

GEORGE B. WARBURTON
JOSEPH T. McGOWAN
COUNSEL

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CHAMBERS
JUDGE STEWART

JUN 26 1975

June 25, 1975

The Honorable Charles E. Stewart, Jr.
United States District Judge
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Re: SHUI FA OIL MILL CO. LTD., et al,
vs. M.S. NORMA et al.
Index No.: 73 Civ. 250
Our File No.: 86024-FOB/FWM

Sir:

This will confirm our conversation with your Law Clerk of today's date wherein it was agreed that the filing date of the stipulated facts and the return date for the briefs of various parties are extended to the 9th and 16th of July, 1975 respectively. We appreciate Your Honor's latitude in this matter.

Respectfully yours,

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN

BY:

Frederick W. Meeker

FWM:ds
cc: Dougherty, Ryan, Mahoney, Pellegrino & Giuffra
Attention: Mr. Peter J. Zambito

Bigham, Englar, Jones & Houston
Attention: Mr. D. Sullivan

ANSWERS OF PLAINTIFF TO INTERROGATORIES OF DEFENDANT AND THIRD PARTY PLAINTIFF (Filed May 28, 1975)
(pp. 362a-370a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250
(CES)

MAY 28 10 40 AM '75
S.D. N.Y.

PLAINTIFFS ANSWERS
TO INTERROGATORIES

Plaintiffs answering interrogatories propounded by defendant and third-party plaintiff, state:

1. For the three year period immediately prior to the voyage in suit, the following are shipments of No. 2 yellow soybeans plaintiffs imported from the United States:

a. S.S. "MINLLY" arrived at Kaohsiung on March 28th, 1970

Shipment: During Jan. 16-31, 1970

Discharged Quantity: 14,068.400 M/T

B/L Quantity: 14,161.290 M/T

Shortage: 92.890 M/T

Percentage of Loss: 0.655943%

b. S.S. "ARANETA MA-AO" arrived at Kaohsiung on May 4, 1970

Shipment: During March 5-20, 1970

B/L Quantity: 14,405.224 M/T

Discharged Quantity: 14,372.800 M/T

Shortage: 32.424 M/T

Percentage of Loss: 0.225%

c. S.S. "JEANINE" arrived at Kaohsiung on July 11, 1970

Shipment: During May 1-30, 1970

B/L Quantity: 13,775.000 M/T

Discharged Quantity: 13,550.160 M/T

Shortage: 224.840 M/T

Percentage of Loss: 1.63223%

d. S.S. "ISLAND SKIPPER" arrived at Kaohsiung on Aug. 17, 1970

Shipment: During July 20-Aug. 10, 1970

B/L Quantity: 14,175.000 M/T

Discharged Quantity: 14,090.000 M/T

Shortage: 85.000 M/T

Percentage of Loss: 0.599647%

e. S.S. UNION COMPANION" arrived at Kaohsiung on Oct. 6, 1970

Shipment: During Aug. 25-Sept. 15, 1970

B/L Quantity: 9,957.361 M/T

Discharged Quantity: 9,729.521 M/T

Shortage: 227.521 M/T

Percentage of Loss: 2.28495%

f. S.S. "EVERPEACE" arrived at Kaohsiung on Dec. 17, 1970

Shipment: During Nov. 5-25, 1970

B/L Quantity: 14,314.714 M/T

Discharged Quantity: 14,298.080 M/T

Shortage: 16,634 M/T

Percentage of Loss: 0.116202%

g. S.S. "CHUNGKING VICTORY" arrived at Kaohsiung on March 7, 1971

Shipment: Jan. 20-Feb. 5, 1971

B/L Quantity: 9,508.435 M/T

Discharged Quantity: 9,447.760 M/T

Shortage: 60.675 M/T

Percentage of Loss: 0.6381176%

h. S.S. "BACOLOD" arrived at Kaohsiung on April 10, 1971

Shipment: Feb. 20-Mar. 10, 1971

B/L Quantity: 14,753.7714 M/T

Discharged Quantity: 14,574.240 M/T

Shortage: 179.5314 M/T

Percentage of Loss: 1.216851%

i. S.S. "UNION FRIENDSHIP" arrived at Kaohsiung on May 26, 1971

B/L Quantity: 13,999.981 M/T

Discharged Quantity: 13,965,600 M/T

Shortage: 34.381 M/T

Percentage of Loss: 0.2455789%

j. S.S. "HAI HSIN" arrived at Kaohsiung on Aug. 19, 1971

Shipment: July 10-31, 1971

B/L Quantity: 4,061.257 M/T

Discharged Quantity: 3,984.320 M/T

Shortage: 76.937 M/T

Percentage of Loss: 1.8944135%

k. S.S. "HAI CHIEN" arrived at Kaohsiung on Oct. 1, 1971

Shipment: Aug. 1-25, 1971

B/L Quantity: 6,938.470 M/T

Discharged Quantity: 6,883.560 M/T

Shortage: 54.910 M/T

Percentage of Loss: 0.79138[illegible]%

l. S.S. "FRANCES" arrived at Kaohsiung on Oct. 5, 1971

Shipment: Aug. 20-Sept. 20, 1971

B/L Quantity: 13,650.000 M/T

Discharged Quantity: 13,395.360 M/T

Shortage: 254.640 M/T

Percentage of Loss: 1.8654945%

m. S.S. "NORMA" arrived at Kaohsiung on March 2, 1972

n. S.S. "SCAPWIND" arrived at Kaohsiung on March 12, 1972

Shipment: During Jan. 25-Feb. 10, 1972

B/L Quantity: 14,624.050 M/T

Discharged Quantity: 14,239.720 M/T

Shortage: 383.330 M/T

Percentage of Loss: 2.62816%

o. S.S. "LINDA" arrived at Kaohsiung on May 25, 1972

Shipment: During April 10-30, 1972

B/L Quantity: 16,800.000 M/T

Discharged Quantity: 16,637.920 M/T

Shortage: 162.080 M/T

Percentage of Loss: 0.9648619%

p. S.S. "TUNG LEE" arrived at Kaohsiung on Aug. 25, 1972

Shipment: During July 1-20, 1972

B/L Quantity: 19,852.710 M/T

Discharged Quantity: 19,606.720 M/T

Shortage: 245.990 M/T

Percentage of Loss: 1.23907516%

q. S.S. "UNION CONCARD" arrived at Kaohsiung on Dec. 18, 1972

Shipment: During Oct. 25-Nov. 15, 1972

B/L Quantity: 10,328.769 M/T

Discharged Quantity: 10,193.360 M/T

Shortage: 135.409 M/T

Percentage of Loss: 1.310988753%

2. Plaintiffs imported the following shipments of No. 2 yellow soybeans from the United States subsequent to the voyage in suit:

a. S.S. "POLAN" arrived at Kaohsiung on Jan. 4, 1973

Shipment: During Nov. 20-Dec. 30, 1972

B/L Quantity: 14,668.537 M/T

Discharged Quantity: 14,489.630 M/T

Shortage: 178.943 M/T

Percentage of Loss: 1.2199%

b. S.S. "KINRA" arrived at Kaohsiung on Aug. 25, 1973

Shipment: During July, 1973

B/L Quantity: 12,000.000 M/T

Discharged Quantity: 11,914.320 M/T

Shortage: 85.680 M/T

Percentage of Loss: 0.7140%

c. S.S. "ALIAKMON" arrived at Kaohsiung on Oct. 2, 1973

Shipment: During Aug., 1973

B/L Quantity: 19,800.000 M/T

Discharged Quantity: 19,527.840 M/T

Shortage: 272.160 M/T

Percentage of Loss: 1.374545%

d. S.S. "ALLY" arrived at Kaohsiung on Dec. 16, 1973

B/L Quantity: 17,749.158 M/T

Discharged Quantity: 17,235.985 M/T

Shortage: 514.293 M/T

Percentage of Loss: 2.897562%

e. S.S. "TAILEE" arrived at Kaohsiung on Jan. 4, 1974

B/L Quantity: 19,650.842 M/T

Discharged Quantity: 19,235.280 M/T

Shortage: 415.562 M/T

Percentage of Loss: 2.114728%

f. S.S. "DIANNA" arrived June 22, 1974

Shipment: During May, 1974

B/L Quantity: 27,128.731 M/T

Discharged Quantity: 26,612.534 M/T

Shortage: 516.197 M/T

Percentage of Loss: 1.902768%

g. S.S. "MINLLY" arrived at Kaohsiung on April 16, 1974

Shipment: During March, 1974

B/L Quantity: 13,748.657 M/T

Discharged Quantity: 13,798.640 M/T

Excess: 245.940 M/T

h. S.S. "FRANCES" arrived at Kaohsiung on May 1, 1974

Shipment: During January, 1974

B/L Quantity: 19,051.075 M/T

Discharged Quantity: 18,714.920 M/T

Shortage: 336.155 M/T

Percentage of Loss: 1.764493%

i. S.S. "APOLLON" arrived at Kaohsiung on March 25, 1974

Shipment: During Feb., 1974

B/L Quantity: 19,789.882 M/T

Discharged Quantity: 19,581.360 M/T

Shortage: 217.522 M/T

Percentage of Loss: 1.099157%

j. S.S. "GRETA" arrived at Kaohsiung on May 27, 1974

Shipment: During April, 1974

B/L Quantity: 19,649.823 M/T

Discharged Quantity: 19,308.800 M/T

Shortage: 341.023 M/T

Percentage of Loss: 1.735501%

k. S.S. "IRENE" arrived at Kaohsiung on May 26, 1974

Shipment: During April, 1974

B/L Quantity: 26,955.536 M/T

Discharged Quantity: 26,427.280 M/T

Shortage: 527.856 M/T

Percentage of Loss: 1.958247%

l. S.S. "EVER SURENESS" arrived at Kaohsiung on Dec. 10, 1974

Shipment: During Nov., 1974

B/L Quantity: 14,163.133 M/T

Discharged Quantity: 13,927.640 M/T

Shortage: 190.473 M/T

Percentage of Loss: 1.344836%

m. S.S. "SPARTO" arrived at Kaohsiung on Oct. 25, 1974

Shipment: During Sept. 1974

B/L Quantity: 14,086.745 M/T

Discharged Quantity: 13,949.040 M/T

Shortage: 137.705 M/T

Percentage of Loss: 0.977550%

n. S.S. "ALLY" arrived at Kaohsiung on Dec. 16, 1974

Shipment: During Nov., 1974

B/L Quantity: 26,416.010 M/T

Discharged Quantity: 26,139.821 M/T

Shortage: 276.179 M/T

Percentage of Loss: 1.0455%

o. S.S. "PAULINA" arrived at Kaohsiung on Dec. 23, 1974

Shipment: During Nov., 1974

B/L Quantity: 21,906.370 M/T

Discharged Quantity: 21,586.203 M/T

Percentage of Loss: 1.4615246615%

p. S.S. "OLIVIA" arrived at Kaohsiung on Jan. 13, 1975

Shipment: During Dec., 1974

B/L Quantity: 10,097.070 M/T

Discharged Quantity: 9,926.880 M/T

Shortage: 170.190 M/T

Percentage of Loss: 1.6855%

Dated: New York, New York
May 27, 1975

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By Daniel A. Sullivan
A Member of the Firm

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99 John Street
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TO:

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& GIUFFRA
Attorneys for Defendant
576 Fifth Avenue
New York, N. Y. 10036

LETTER BY ATTORNEYS FOR PLAINTIFF RE: STIPULATION OF FACTS
(pp. 371a-372a)

BIGHAM ENGLAR JONES & HOUSTON
99 JOHN STREET
NEW YORK, N.Y. 10038

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DANIEL A. SULLIVAN
JAMES H. SIMONSON
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ROY LEIFFLEN
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WASHINGTON D.C. 20045

CABLES "KEDGE"

WESTERN UNION
TELEX 12 6902

RCA TELEX
236332

RECEIVED
JUDGE STEWART'S CHAMBERS
JUN 4 1975

June 2, 1975

Shui Fa Oil Mill Co. Ltd., et al
v. M/S "NORMA", et al
73 Civ. 250 (CES)

Shui Fa Oil Mill Co. Ltd., et al
v. Cook Industries Inc.
73 Civ. 251 (CES)
(Our File J 9021)

.....

Honorable Charles E. Stewart, Jr.
United States District Judge
U.S. District Court
Foley Square
New York, N. Y. 10007

Sir:

This will confirm that at a pre-trial conference before Your Honor today it was agreed that the attorneys for the parties to the above entitled cases would attempt to agree upon a Stipulation of Facts by July 2, 1975 and that Briefs would be submitted to the Court by July 9, 1975.

It was also agreed that if the parties failed to agree upon a Stipulation of Facts by July 2 that the attorneys for Cook

Industries Inc. would renew its motion for summary judgment by that date.

Respectfully,

BIGHAM ENGLAR JONES & HOUSTON

By _____
Daniel A. Sullivan

cc: Messrs. Hill, Rivkins, Carey,
Loesberg & O'Brien
96 Fulton Street
New York, N. Y. 10038
Attention: William Meeker, Esq.

Messrs. Dougherty, Ryan, Mahoney,
Pellegrino & Giuffra
576 Fifth Avenue
New York, N. Y. 10036
Attention: Peter J. Zambito, Esq.

ANSWERS OF THIRD PARTY DEFENDANT COOK INDUSTRIES, INC. TO AMENDED THIRD PARTY COMPLAINT (Filed June 24, 1975) 373a
UNITED STATES DISTRICT COURT (pp. 373a-375a)
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. AND KING TAI YI TRADING CO. LTD.,	Index No. 73 Civ. 250 (CES)
Plaintiffs,	ANSWER TO AMENDED THIRD-PARTY COMPLAINT
-against-	
M.S. NORMA, her engines, boilers, etc., and AUSTIN NAVIGATION CORP. LTD.,	
Defendant and Third-Party Plaintiff,	
-against-	
COOK INDUSTRIES, INC.,	
Third-Party Defendant.	

The third-party defendant, COOK INDUSTRIES, INC., by its attorneys, HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN hereby answers the amended third-party complaint of defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., as follows:

1. Admits the allegations contained in paragraphs one, two, three, four and five of the amended third-party complaint.

2. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph six of the amended third-party complaint, in that plaintiff receivers had responsibility for discharge of the cargo which is the subject matter of this dispute.

3. Admits the allegations contained in paragraph seven of the amended third-party complaint.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph eight of the amended third-party complaint.

5. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs nine and ten of the amended third-party complaint.

6. Third-party defendant answers paragraph eleven of the amended third-party complaint as in the preceding answers hereto and with the same force and effect as if herein repeated.

7. Denies knowledge or information sufficient to form a belief as to theallegations contained in paragraphs twelve and thirteen of the amended third-party complaint.

8. Third-party defendant answers paragraph fourteen of the amended third-party complaint as in the preceding answers hereto and with the same force and effect as if herein repeated.

9. Admits the allegations contained in paragraphs fifteen, sixteen and seventeen of the amended third-party complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs eighteen and nineteen of the amended third-party complaint.

FIRST DEFENSE

11. That the charter party referred to in the amended third-party complaint between third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., and third-party defendant, COCK

BEST COPY AVAILABLE

INDUSTRIES, INC., attached hereto and marked for identification as Exhibit A, contains a New York Produce Exchange Arbitration Clause calling for arbitration of all disputes arising under the charter party between owners (Third-party plaintiff) and charterers (Third-party defendat).

WHEREFORE, third-party defendant, COOK INDUSTRIES INC., prays that the third-party complaint of defendant and third-party plaintiff, AUSTIN NAVIGATION CORP. LTD., be dismissed with costs, or, in the alternative, that the instant third-party action be stayed pending arbitration as per the charter party provisions and that COOK INDUSTRIES, INC., may have such other further and different relief as to this Court seems just and proper.

Dated;New York, New York

June 24, 1975.

HILL, RIVKINS, CAREY, LOESBERG
& O'BRIEN
Attorneys for Third-Party
Defendant

BY: _____
Attorney of Record

96 Fulton Street
New York, New York
10038

TO: DOUGHERTY, RYAN, MAHONEY,
PELLEGRINO & GIUFFRA
Attorneys for Defendant
and Third-Party Plaintiff
576 Fifth Avenue
New York, New York 10036

STIPULATION OF FACT WITH EXHIBITS ANNEXED
(pp. 376a-412a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc., and AUSTIN NAVIGATION CORP., LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250 (CES)

SHUI FA OIL MILL CO. LTD., et al,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

73 Civ. 251 (CES)

The undersigned attorneys for the respective parties hereto hereby stipulate and agree for the purposes of this action only to the following facts:

1. By order of this Court dated December 6, 1973 it was directed that the above entitled actions (73 Civ. 250 and 73 Civ. 251) were consolidated for all purposes under the caption of 73 Civ. 250.

2. The Court has jurisdiction over the controversies in suit.

3. Plaintiffs are duly organized corporations and were the consignees and purchasers of the cargo which is the subject matter of the within actions.

4. Defendant AUSTIN NAVIGATION CORP. LTD. (hereinafter referred to as "AUSTIN") is a duly organized corporation with an office and place of business at 25 Broadway, New York, N. Y. and at all material times was the owner of the M/S "NORMA".

5. COOK INDUSTRIES INC. (hereinafter referred to as "COOK"), defendant in 73 Civ. 251 and third-party defendant in 73 Civ. 250, was at all material times the voyage charterer of the M/S "NORMA" and the shipper and seller of the cargo in suit.

6. On or about November 19, 1971 defendant COOK entered into a contract with China Trade and Development Corp., which corporation acted on behalf of plaintiffs, to sell and arrange for shipping to Formosa of the cargo in suit stated to be 14,000 metric tons with tolerance of 5.0%. The tolerance of 5.0% referred to the fact that COOK could ship between 13,300 metric tons and 14,700 metric tons. A copy of said contract together with a copy of The Incorporated Oil Seed Association contract 79 are attached hereto as Exhibits "1-A" and "1-B".

7. A copy of the form of invoice used for the shipments in suit is attached hereto and marked Exhibit "2".

8. At the time the voyage in suit was performed, the M/S "NORMA" was operating under a space charter dated

at New York December 16, 1971 entered into between AUSTIN, as owners, and COOK, as charterers. A copy of said charter is annexed hereto and marked Exhibit "3".

9. Defendant AUSTIN, through its agent Gulf Coast Shipping Corp., issued bills of lading for the cargo in suit. A schedule describing said bills of lading is annexed hereto and marked Exhibit "4" and the form of such bills of lading is annexed hereto and marked as Exhibit "5".

10. Eight weight certificates totalling 32,409.449 lbs. or 14,700.68 metric tons, dated January 5, 1972, were issued by Destrehan Board of Trade at Reserve, Louisiana for the cargo in suit. Copies of said certificates are annexed hereto and marked Exhibits "6-A" through "6-H".

11. That if Daniel X. Willis was called to testify, his testimony would be as stated in his affidavit, copy of which is annexed hereto and marked Exhibit "7".

12. The loading stevedore at Reserve, Louisiana was paid by or on behalf of defendant AUSTIN.

13. The cargo in suit was stowed in bulk in Nos. 1, 3 and 5 holds of the M/S "NORMA". No other cargo was stowed in those holds.

14. The M/S "NORMA" sailed from Reserve, Louisiana on January 5, 1972 and arrived at Kaohsiung, Taiwan on March 2, 1972. The vessel did not call at any intermediate port to load or discharge cargo.

15. Discharging of the cargo in suit was carried out by the Kaohsiung Port Authority.

16. A surveyor employed by International Surveyor Co., acting on behalf of plaintiffs, was in attendance during the discharging and weighing of the cargo in suit. If called to testify, said surveyor's testimony would be as stated in the Surveyor's Report, copy of which is attached and marked Exhibit "8".

17. All the vessel's holds were swept by the stevedores hired by the Port Authority under the supervision of International Surveyors Co. and the vessel's holds were emptied of plaintiffs cargo.

18. Other shipments of No. 2 yellow soy beans in bulk imported by plaintiffs from the United States are described in plaintiffs' answers to interrogatories heretofore filed in this action on May 28, 1975. A copy of said answers is annexed hereto and marked Exhibit "9".

19. Plaintiffs claim is for a shortage of 254.230 metric tons and water damage to 24.88 metric tons. This stipulation is limited to the claim for shortage as the parties expect to settle the water damage claim.

20. Plaintiffs claim is for 254.230 metric tons at $127.65 per ton which amounts to $32.452.46.

21. That if Mr. Jack Berg, Vice President of Continental Grain Company, was called to testify, his testimony would be as stated in his letter dated July 11, 1975, copy of which is annexed hereto and marked Exhibit "10".

Dated: New York, N. Y.
July 15, 1975.

Attorneys for Plaintiffs

Hunton Clark Lyon Mahoney
Parker Springmann & Richman
By: Peter J. Pembert

Attorneys for Defendant and
Third-Party Plaintiff,
Austin Navigation Corp., Ltd.

Attorneys for Third-Party
Defendant, Cook Industries, Inc.

BEST COPY AVAILABLE

381a

COOK'S CONTRACT NUMBER [illegible]

CONTRACT DATE 11-19-71

[illegible] CHINA TRADE DEVELOPMENT CORP
TAIPEI
TAIWAN

QUANTITY TO LOAD 14,000 METRIC TONS BUSHELS 514,436.00 TOLERANCE 5.0 %

GRADE & QUALITY #2 YELLOW SOYBEANS OTHER SPECS FEDERAL APPEAL

PRICE 127.65 PER METRIC TON PRICE BASIS LOCATION GULF FORMOSA

SHIPMENT PERIOD DEC 25/JAN 15

RIGHTS TO GOVERN LOADING OFFICIAL GRADES TO GOVERN LOADING OFFICIAL-FED AP

DISCOUNT SCALE

INSURANCE C & F BUYER ROUTING DRY CARGO GEARED NO OVER AGE

PAYMENT TERMS PMT NET CASH IRREV DIV L/C BY PRIME US BNK NYC OPENED PRIOR LOG IN EXCH SHPG DOCS

ORIGIN US GULF OR ATLANTIC DESTINATION KAOHSIUNG

REMARKS GOVERNING CONTRACT: ICSA 79 FULL OR PART CARGO SELLERS OPTION FORMOSA FIRST OR SECOND DISPORT S/O VIA EITHER JAPAN OR KOREA DISCHARGE - BUYERS ACCOUNT * BUYERS QUAD DISCHARGE RATE OF 1,500 M/T/DAY

DATE	SUPPLIER PRICE	FREIGHT DISC.	FLAT PRICE	BUSHELS PRICED	BUSHELS UNPRICED (REMARKS)

BROKER NAME CTDC
RATE PAID .15000 PER METRIC TON
DATE
ALLOC PERIOD FH JAN 514,436

EXPORT
FOB GULF
CAN EQUALS 3.22 T/S
PRT 9.000 EXTRAS .000
BANKING .00000 WT RISK .00000 DISCHARGE .000
LOAD CLEAR [illegible] INSURANCE [illegible]

DLV. DATE	TRANSPORTATION CONTRACT NUMBER	FINAL SETTLEMENT WEIGHT	FINAL SETTLEMENT DATE	OPEN BALANCE	LONS	INVOICE NUMBER	CONTRACT NUMBER	REMARKS
1/5/72	EDSHA	540,157/29		filled	LONG 14468.50% equalling			
					14,700 m/t x $127.65--- $ 1,876,455.00			

(Overfill)

CLOSED

EXHIBIT "H"

CONTRACT FOR CANADIAN AND UNITED STATES OF AMERICA SOYBEANS

382a

1956 Parcel/s 79

Copyright

London, ... 19....

1. Buyers of
Sellers
on all conditions and rules stated herein.

2. THE FOLLOWING

tons, say
tons of 2,240 lbs./1,000 kilos. each.

3. To be shipped in good condition from ..... as per Bill or Bills of Lading dated or to be dated ..... by steamer and/or steamers (Tankers excluded) direct or indirect, with or without transhipment to .....

say
at ..... per ton of 2,240 lbs./1,000 kilos., shipped cost, freight and insurance in bulk.

4. Sellers have the option of shipping 5% more or less of the contract quantity, excess or deficiency over two per cent. to be settled on the CIF price on the date of vessels reporting—this value to be fixed by arbitration unless mutually agreed.
Dockage not to be considered in the quantity deliverable under this contract.

5. Official ..... certificate of inspection to be final as to quality and such certificate to be considered as proof of good condition at time of shipment. The Buyer under this contract shall not be entitled to reject a tender of a higher grade of the same colour and description.

6. The beans are not warranted free from defect rendering them unmerchantable which would not be apparent on reasonable examination.

7. The out-turn to be computed at 1,016 Kilos. equal to 2,240 lbs. English.

8. For the purpose of this Contract the words *steamer* or *steamers* are intended to include any full powered primarily engine-driven vessel classed not lower than 100 A.1 or British Corporation L.S., or top classification in American, French, Italian, Norwegian or other equal Register, or ships not inferior to these classifications.

9. Sellers may ship the usual proportion in bags for stowage purposes, such bags to remain ships' and/or sellers' property.

10. In any month containing an odd number of days the middle day shall be reckoned as belonging to both halves of the month.

11. Bill of Lading to be considered proof of date of shipment in the absence of evidence to the contrary. Each shipment appropriated in whole or part fulfilment of this Contract to be considered a separate Contract, but each Bill of Lading not to be considered a separate shipment except as to the date on which it can be appropriated. In the event of more than one shipment being made each shipment to be considered a separate Contract but the margin on the mean quantity sold not to be affected thereby.

12. Notice of Appropriation with ship's name, and date of Bill of Lading shall within seven days from date of Bill of Lading be telegraphed, cabled or radioed by the Shipper of the Soybeans tendered under this Contract direct to his Buyer or to the Seller's house or Representative or Agent in Europe and be passed on by his buyer or by the said European House, or Representative, or Agent and by each subsequent Seller, to his Buyer within the said seven days or in due course if received after that time; notices of appropriation received after the said seven days shall be passed on by telegram if Sellers and Buyers do not reside in the same country. All notices under this Clause shall be deemed to be under reserve for errors or delays in telegraphic, cable or radio transmission, and shippers cabled notice shall also be deemed to be under reserve for error in the date of Bill of Lading. On demand of Buyer, Seller shall give a copy of the particulars contained in the notice of appropriation received from his Seller, and Buyer shall, on demand, give Seller a written receipt of notice of appropriation. A valid notice of appropriation when once given shall not be withdrawn.

13. Freight Payable as provided in Bill of Lading &/or Charter Party.

14. Payment of full invoice amount by net cash in .....
A. In exchange for and on first presentation of first arriving set of shipping documents.
B. In exchange for shipping documents, on or before arrival of the ship at port of discharge, but if the ship shall not have arrived within ..... days from date of Bill of Lading, payment, unless already made, to be made on or after the ..... day from Bill of Lading date when required by Sellers.

Seller has the option of tendering delivery order (countersigned by Banker, Shipbroker, Captain or Mate if so required) and Certificate and/or Letter of Insurance. If shipping documents have not been sighted at time of vessel's arrival at port of discharge, Seller must provide documents entitling Buyer to obtain delivery of the Soybeans from the vessel and payment must be made in exchange for same, such payment to be made without prejudice to Buyer's rights under the contract. No obviously clerical error in documents shall entitle the Buyer to reject them or delay payment but Seller shall be responsible for all loss or expense which such error may cause Buyer.

Should documents be presented with incomplete set of Bill or Bills of Lading attached, payment shall be made, provided the delivery of the remaining Bill or Bills of Lading in due course be guaranteed by Sellers.

Sellers shall not be responsible for delays in receipt of documents by Buyers, always provided that such delays are not caused by the default of Sellers. When payment is due on a Saturday, Sellers shall have the right to present documents on the preceding business day for payment after banking hours.

15. Sellers to supply Policy/ies and/or Certificate/s and/or Letter/s of Insurance effected with approved underwriters (for whose solvency Sellers are not responsible) on customary F.P.A. conditions for not less than two per cent. over the amount of the provisional invoice (but including any ocean freight prepaid or freight payable at destination), any amount over two per cent. to be for Seller's account. The original Marine Insurance shall extend to cover from the time of discharge while in the normal course of transit until delivered to the consignee's or other final warehouse at destination named in the Contract. When the port of destination is Hamburg the policy is to cover risk of craft on the aforementioned conditions to Harburg and/or Wilhelmsburg and/or Billwerder.

16. Sellers shall insure goods against war risks on usual Lloyd's conditions but Sellers' obligation in this respect shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment. The rate of insurance not to exceed the rate ruling in London on the date of Bill of Lading or date of steamer's sailing from each loading port for which Bill or Bills of Lading are issued, whichever may be adopted by Underwriters. Any War Risks premium in excess of one-half per cent. shall be payable by Buyers at time of payment and shall be advised to Buyers not later than time of appropriation or not later than three days after the rate has been agreed with Underwriters whichever may be the later.

17. Buyers to accept documents containing the White Star Deviation and/or the Chamber of Shipping Deviation Clause and/or any other recognised official War Deviation Clause.

13. The Assured is held covered against "loss or damage arising or resulting from act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship" for which the "carrier" or "ship" is relieved of responsibility under Article IV Section 2 of the Rules appended to the Water Carriage of Goods Act, 1936, of Canada, and/or Section 3 of the Act of Congress of the United States approved 13th February, 1893, and/or Section 4 Sub-section 2 of the Carriage of Goods by Sea Act 1936, of the United States of America, but nothing in this clause contained shall limit or affect any rights which Underwriters may have by subrogation or otherwise, against the owners of the said vessel. Claims arising under this clause are not subject to the F.P.A. warranty.

19. The Beans to be worked immediately on arrival and discharged according to the custom of the port of discharge or as customary for liners if so provided in the Bill of Lading. If documents are tendered which do not provide for discharging as above or contain contrary stipulations as to discharge and/or demurrage, Seller to be responsible to Buyer for all extra expenses incurred thereby.

Any dues and/or taxes payable at destination in respect of the within-mentioned beans and/or carrying vessel by reason of having these beans on board to be for Buyer's account. Import licence/s if required to be obtained by Buyers and all import dues and/or taxes to be for Buyer's account. Seller to furnish certificate of origin if required.

20. The whole shipment to be weighed at time of discharge; Seller and Buyer shall have the right of supervision both as to weighing and delivery.

21. Should any of the above-mentioned quantity form part of a larger quantity of the same or different period of shipment of similar quality, whether in bags or bulk, no separation or distinction shall be necessary.

All loose collected, damages and sweepings, and any excess or deficiency in the quantity delivered, shall be shared by and apportioned *pro rata* between the various Receivers thereof buying under contracts containing this clause, and any of them receiving more or less than his *pro rata* share or apportionment shall settle with the other or others of them for the same in cash at the market price of the day of vessel's arrival (such price to be fixed by arbitration unless mutually agreed). All Sellers and Buyers of any part of such larger quantity as aforesaid under contracts containing this clause shall be deemed to have entered into mutual agreements with one another to the above effect, and to agree to submit to arbitration all questions and claims between them or any of them in regard to such *pro rata* sharing or settlement as aforesaid in accordance with the arbitration rule endorsed hereon.

Sellers and Buyers shall give all reasonable assistance in ascertaining the *pro rata*.

All Sellers shall be responsible for the settlement of the *pro rata* by their respective Buyers within reasonable time.

22. Any deficiency on Bill of Lading weight to be paid for by Seller, and any excess over Bill of Lading weight to be paid for by Buyer at contract price. No payment shall be made for increase in weight ascertained by water and/or oil during the voyage. In case of Sea Accidents (pumping up Beans excepted) causing a deficiency on invoice weight, provisional invoice quantity to be final, except when such deficiency cannot be accounted for by the nature of the accident and is not recoverable from Underwriters.

23. Notice of Arbitration with name of Arbitrator, to be given by party claiming arbitration within 21 days of ships reporting. The other party to appoint his Arbitrator within 7 days from receipt of such notice. Intermediate Buyers and Sellers to pass on all communications without delay. Should either party fail to appoint his Arbitrator within the time specified, the Arbitrator appointed by the other party shall act as Sole Arbitrator, and his award shall be final. Should the two Arbitrators, or Umpire, agree to extend the time of appointment, or of making their award, the award shall be final and binding on all parties. Arbitration to be held within [illegible] days of date claimed unless Buyers' and Sellers' Arbitrators, or Umpire, agree to extend the time. Arbitration to be held in London and to be conducted according to the rules of the London Produce Clearing House in force at the time of receipt. Arbitration to be held within [illegible] days of guaranteed date of shipment, or at any time thereafter at the option of the party claiming arbitration. Any time during which the loading of the vessel is prevented by reason of [illegible] shall be excluded in computing the time for holding the arbitration. Any dispute arising out of this contract may be proceeded with at any time during the [illegible] days of guaranteed date of shipment, or at any time thereafter at the option of the party claiming arbitration. Any time during which the loading of the vessel is prevented by reason of [illegible] shall be excluded in computing the time for holding the arbitration. Any dispute arising out of this contract may be proceeded with at any time during the [illegible] days of guaranteed date of shipment, or at any time thereafter at the option of the party claiming arbitration.

24. [illegible] by reason of [illegible] shall be excluded in computing the time for holding the arbitration. Any dispute arising out of this contract may be proceeded with at any time during the [illegible] days of guaranteed date of shipment, or at any time thereafter at the option of the party claiming arbitration.

...cancelled.

If required by Buyers, Sellers shall produce documentary evidence to establish any claim for compensation under this clause.

23. In the default of the Buyers of contract by either party the other party at his discretion shall, after giving notice in writing, have the right to sell or purchase, as the case may be, again at the defaulter who shall make good the loss, if any, on such sale or purchase and profit, if any, to be retained by the party in default. If the party in default shall be entitled to pay shall be dissatisfied with the price of such sale or purchase the damages, if any, payable by the party in default, shall be settled by arbitration, any claim for such arbitration to be made within fourteen days from the date of the notification of such sale or purchase, or, if the above rights is not exercised, within fourteen days of the date of advice of the closing out of the Contract at the market price. Such damages shall be limited to the difference between contract price and market price on the day of default unless the default is due to the wilful failure of a Seller to deliver any damages shall be computed upon the mean contracted quantity.

27. If either party, whether an individual, firm or company, shall suspend payment of his or their debts, or shall intimate in writing that he or they is or are about to suspend payment of his or their debts, or being a firm or individual, shall commit an act of bankruptcy, or, being a company shall go into liquidation (except in the case of a solvent company for the purpose of reconstruction or amalgamation) or, if a Receiver is appointed by the Court or Debenture holders, he or they shall be deemed to be and shall be treated as being in default and the other party shall after giving notice in writing to the party so deemed to be and treated as being in default as aforesaid, and notwithstanding any bankruptcy or liquidation, have the right forthwith to sell or purchase, as the case may be, against such party, and shall be entitled to claim or prove in bankruptcy or liquidation or otherwise, for the loss or shall account for the profit, if any occasioned by such sale or purchase. If the party against whom such sale or purchase is made as aforesaid shall be dissatisfied with the price of such sale or purchase, or if the above right is not exercised, this Contract shall be closed at the market price of the day on which default is deemed or treated as having taken place, such closing price shall be determined by arbitration if not agreed. The amount which the other party shall be entitled to claim or shall be liable to account for shall be the difference between the contract price and such closing price.

ETC. 28. Buyers and Sellers agree that, for the purpose of proceedings, either legal or by arbitration, this Contract shall be deemed to have been made in England and to be performed there, any correspondence in reference to the offer, the acceptance, the place of payment or otherwise notwithstanding, and the Courts of England or Arbitrators appointed in England, as the case may be, shall except for the purpose of enforcing any Award made in pursuance of the arbitration clause thereof, have exclusive jurisdiction over all disputes which may arise under this Contract. Such disputes shall be settled according to the law of England, whatever the domicile, residence or place of business of the parties to this Contract may be or become. Any party to this Contract residing or carrying on business in a foreign country shall, for the purpose of proceedings be considered as ordinarily resident or carrying on business at the Consulate in London of the country of his residence or place of business. Any party to this Contract residing or carrying on business either in Scotland or Northern Ireland, or any Colony or Dependency of the United Kingdom, shall for the purpose of such proceedings, be considered as ordinarily resident or carrying on business at the Office of THE INCORPORATED OIL SEED ASSOCIATION, and being a party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction as against himself, to the English Courts, and being a party residing or carrying on business in Northern Ireland shall be held to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of proceedings upon a party residing or carrying on business in a foreign country by leaving the same at such Consulate and upon a party residing or carrying on business either in Scotland or Northern Ireland, or in any Colony or Dependency of the United Kingdom, by leaving the same at the offices of THE INCORPORATED OIL SEED ASSOCIATION, together with the posting, in a registered cover of a copy of such proceedings to the address abroad, or in Scotland or Northern Ireland, or in any Colony or Dependency of the United Kingdom, of such party, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

...ION. 29. All disputes from time to time arising out of this Contract including any question of Law appearing in the proceedings whether arising between the parties hereto, or between one of the parties hereto, and the Trustee in Bankruptcy of the other party, shall be referred to arbitration according to the Rules appended to this Contract, and this stipulation may be made a Rule of any of the divisions of Her Majesty's High Court of Justice in Northern Ireland on the application of either contracting party, for the purpose of enforcing an Award against a party residing or carrying on business in Northern Ireland. Neither Buyers, Sellers, Trustee in Bankruptcy, nor any other person claiming under either of them, shall bring any action against the other of them in respect of any such dispute until such dispute has been settled by the Arbitrators, Umpire, or Committee or Board of Appeal, as the case may be, and it is expressly agreed that the obtaining of an Award from either tribunal, as the case may be, shall be a condition precedent to the right of either contracting party to take any legal proceedings against the other in respect of any claim arising out of this Contract. All costs of or connected with the stating and argument of any Special Case for the opinion of the Court on any question of law arising in the course of the reference shall be borne and paid by the party requiring the same to be stated unless or except so far as otherwise determined by the Award to be made in the reference.

...S OF 30. The Contract period for shipment, if such be 31 days or less shall, if desired by shipper, be extended by an additional period not exceeding eight days, provided he gives his Buyer notice by cable of his intention to claim additional days not later than the business day following the last day included in the originally stipulated period for shipment, such notice shall be passed on by other Sellers to their Buyers respectively in due course after receipt. Such notice need not state the number of additional days claimed by the Seller and the Seller may ship at any time within eight additional days. The Seller, however, shall make an allowance to the Buyer, to be deducted in the invoice from the Contract price, based on the number of days by which the originally stipulated period is exceeded, as follows:—

For 1, 2, 3 or 4 additional days, 4% of the gross c.i.f. price.
For 5 or 6 additional days 1% of the gross c.i.f. price.
For 7 or 8 additional days, 1½% of the gross c.i.f. price

If, however, after having given notice to the Buyer as above, the Seller fails to make shipment within such eight days, then the Contract shall be deemed to have called for shipment during the originally stipulated period plus eight days, at contract price less 1½% and any settlement for default shall be calculated on that basis.

...AL.

...S. 31. A notice and/or tender to the Broker or Agent shall be deemed a notice and/or tender under this Contract.

...NICATION. 32. Any reference to the giving or passing on of notices by cable or telegraph shall include the giving or passing on thereof by cablegram, telegram, teleprinter, telex or similar method of rapid written communication.

33. The word days means running days unless otherwise stated.

...SINESS 34. Should the time limited for doing any act or giving any notice expire on a Sunday, Saturday or any Public Holiday or on any day which THE INCORPORATED OIL SEED ASSOCIATION shall declare to be a non-business day the time so limited shall be extended until the first business day thereafter except as provided in the Payment Clause.

Signature.....

RULES—ARBITRATION.

1.—Any dispute arising out of a contract embodying these rules shall be referred to arbitration in London, each party appointing one arbitrator, who shall be a member of the Association, or partner in a member's firm, or a director of a company represented by a member, and such arbitrators shall have the power if and when they disagree to appoint an umpire, who shall be a member of the Association, or a partner in a member's firm, or a director of a company represented by a member, whose decision is to be final. No person having a direct or indirect interest in the matter in dispute shall be appointed to act as arbitrator or umpire except in disputes with regard to quality when both parties to the dispute give written agreement thereto as to the arbitration being held.

2.—The arbitration fees to be paid by the party against whom the decision is given, except when allowances are fixed by arbitration on country damaged or sea damaged ...ding the voyage, in such cases the fees to be equally divided, also in other cases, where, in the opinion of the referees they should be so treated.

3.—In the event of one of the parties refusing to appoint an arbitrator, or neglecting to do so for seven days after notice in writing of such an appointment by the other (such notice be delivered personally or left at the usual place of business of the party so omitting to appoint), or in case the arbitrators shall not within seven days after their appointment agree to award or appoint an umpire, or in case after the appointment of such arbitrators or umpire he or any of them shall die, or refuse to act, or become incapable of acting, and party or parties with whom their or its appointment originally rested shall omit to appoint a substitute within three days after notice of such death or refusal, or incapacity, then upon ...ication by either of the disputing parties, and provided the applicant at the same time pays to the Secretary of THE INCORPORATED OIL SEED ASSOCIATION the sum of £5 5s., the ...ative Committee shall appoint an arbitrator or arbitrators, or umpire, who shall be members of the Association and the arbitrators or umpire shall have the power to ...d the award not connected with the reference, and may assess the cost at a fixed sum if they or he shall think fit.

4.—All awards by arbitrators or an umpire shall be in writing on an official form issued by the Secretary of THE INCORPORATED OIL SEED ASSOCIATION providing a ...ce is filed with the Secretary of the Association not later than noon on the 30th consecutive day after the date of the Award and provided also that the Appellant at the same time ...to the Association an Appeal fee of £7 7s. 0d. unless the Appellant is a Member or a firm represented in the Membership of the Association in accordance with the Regulations of Association

5.—In case either party shall be dissatisfied with the Award they shall have a right of appeal to the Committee of Appeal of the Association in accordance with the Regulations of Association ...Appeal shall be determined by a Board of Appeal consisting of four members of the Committee of Appeal of the Association in which case the fee shall be £25.

6.—An appeal shall be determined by a Board of Appeal consisting of four members of the Committee of Appeal who has not ...time being of THE INCORPORATED OIL SEED ASSOCIATION, and the Rules of the Executive Committee for the time being in force. Not member of the Committee of Appeal who has an ...firm or company to which either of the arbitrators or the umpire shall ...the case and no member of the same firm or company to which either of the arbitrators or the umpire shall ...to the matter in dispute or who has acted as arbitrator or umpire in the case and no member of the Board of Appeal.

...shall vote on the question of the appointment of members of the Board of Appeal or shall be appointed a member of the Board of Appeal. Any party to which either of the arbitrators or the ...Neither the arbitrators nor the umpire who have acted in a dispute on or portion of a parcel nor any member of the same firm or company with which either of the arbitrators or the umpire shall ...parcel to the following cases: (a) In a dispute as to quality when there is only one sample and enables a representing the entire quantity available; (b) In a dispute as to matters other ...shall be entitled to vote for the election of a Board of Appeal or be eligible for appointment on a Board of Appeal dealing with questions arising on the remainder of ...when each of the questions arising is similar to any of those arising in the case in which they have already acted as arbitrators or umpire; but, save as to these Rules herein-...parcel, any Member or a Board of Appeal which has dealt with one such case shall be eligible to vote for or serve on a Board of Appeal dealing with a subsequent case arising on the ...order of the parcel.

7.—All parties to an arbitration or an appeal to the Committee of Appeal shall not be represented or appear by Counsel or Solicitor on the hearing of such arbitration or appeal ...ion of the arbitrators, or umpire, as the case may be, or Board of Appeal, the case is of special importance or questions of law are likely to arise upon which the ...Board of Appeal may be required.

8.—A Board of Appeal shall confirm the Award appealed from unless not less than three of the members of the Board of Appeal decide to vary such Award. The Board of Appeal ...Board of Appeal shall confirm the Award appealed from unless not less than three of the members of the Board of Appeal decide to vary such Award. The Board of Appeal ...award the payment of the costs and expenses of and incidental to the appeal but the appeal fee shall follow the award unless three of the members of the Board of Appeal shall direct ...award the payment of the costs and expenses of and incidental to the appeal but the appeal fee shall follow the award unless three of the members of the Board of Appeal shall direct ...The Board of Appeal shall have the power to vary an Award in addition to the power to vary in any other manner by letter signed by the Secretary ...The Board of Appeal shall have the power to vary an Award in addition to the power to vary in any other manner by letter signed by two members of the Board of Appeal and countersigned by the Secretary ...award of the Board of Appeal whether confirming or varying the original award shall be binding upon all parties and shall be final and conclusive in all cases. ...award of the Board of Appeal whether confirming or varying the original award shall be final and conclusive in all cases.

9.—The award of the Board of Appeal shall be deemed to be the award of the Board of Appeal and of the Committee of Appeal and shall be final and conclusive in all cases. ...The award of the Board of Appeal shall be deemed to be the award of the Board of Appeal and of the Committee of Appeal and the Committee of Appeal shall be entitled to payment of such costs, if any, as the Committee of ...

10.—The appellant shall have the right at any time before the hearing of the Appeal by Board of Appeal to withdraw his appeal subject to payment of such costs, if any, as the Committee of ...

11.—Any appellant shall have the right at any time before the hearing of the Appeal by Board of Appeal to withdraw his appeal subject to payment of such costs, if any, as the Committee of ...

12.—Any appellant shall have the right at any time before the hearing of the Appeal by Board of Appeal to withdraw his appeal subject to payment of such costs, if any, as the Committee of ...

13.—Any appellant who shall not appear by himself or his representative duly authorised to act as provided in ...

14.—Any appellant who shall not appear by himself or his representative duly authorised to act as provided in ...

15.—Any appellant who shall not appear by himself or his representative duly authorised to act as provided in ...

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33.—Any appellant who shall not appear by himself or his representative duly authorised to act as provided in ...

34.—Any appellant who shall not appear by himself or his representative duly authorised to act as provided in ...

COOK INDUSTRIES, INC.

384a

GRAIN DIVISION

OUR CONTRACT NUMBER	SALE DATE	YOUR NUMBER	INVOICE DATE	INVOICE NUMBER
SB-13106E	11 19 71		JAN.6, 1972	CG-7525

CHINA TRADE & DEVELOPMENT CORP.
3rd FLOOR, 59, KWAN CHIEN RD.
TAIPEI
O/B
SHUI FA OIL MILL CO. LTD.

COPIES OF PAPERS ATTACHED

THIS INVOICE	CLN. ON BOARD B/L	NON-NEG. B/L	CERTIFICATES INSP.	CERTIFICATES WGT.	CERTIFICATES INSURANCE
4	3	2	3	3	(C&F)

(COPIES) OTHER PAPERS

Phytosanitary Certificate/triplicate
Certificate of Origin/Triplicate

SHIPPED PER	B/L DATE	SHIPPED FROM	DESTINATION
NORMA	1-05-72	RESERVE, LOUISIANA	KAOHSIUNG

FREIGHT PREPAID/~~COLLECT~~	BUSHELS	POUNDS	LONG TONS	METRIC TONS	EXTENSION
QUANTITY:	36,745/24	2,204,724	984.2520	1000.000	PAY LAST AMOUNT IN THIS COLUMN ↓

QUALITY: COVERING

1,000 METRIC TONS (OF 1,947.75) MT OF US YELLOW SOYBEAN
US GRADE NO.2 OR BETTER IN BULK AT US$127.65 PER M/T C&F FO
PRICE & BASIS: KAOHSIUNG

IMPORT LICENSE NO. 60S4-2212

COVERING SHIPMENT OF:

1,000 METRIC TONS @ US $ 127.65 PER M/T $ 127,650.00

TAIPEI BRANCH
Bank of America
B/P.Co.

PAYMENT SPECIFICATIONS By drafts at 180 days sight/and at sight, as outlined by letter of credit (discount charges & acceptance commission for buyers account) DRAWN UNDER B OF A CREDIT NO. 6062/35903U
ADVISED THROUGH BANK OF AMERICA
CHICAGO, ILLINOIS UNDER CREDIT
No.E-11301

DOCUMENTS TO:
BANK OF AMERICA
41 BROAD STREET
NEW YORK, NEW YORK

U.S. law prohibits shipments to North Korea, Cuba, Vietnam and Laos, unless authorized by the U.S.

COOK INDUSTRIES, INC.
GRAIN DIVISION

AUTHORIZED SIGNATURE AS REQUIRED

SPACE BROKERS, INC.
[illegible] WEST MAIN ST.
P. O. BOX [illegible]
BABYLON, N. Y. 11702
CABLES: "SPACESHIP", BABYLON
C-1681 [illegible]
STEAMSHIP & CARGO BROKERS

385a

BALTIMORE BERTH GRAIN CHARTER PARTY—STEAMER

New York, December 16, 1971

It is this day Mutually Agreed, BETWEEN AUSTIN NAVIGATION CORPORATION, LTD., Monrovia, Liberian Flag Steamship "NORMA", single-deck, self trimming bulkcarrier, cargo to be loaded in holds only
Liberia, owners of the Steamship
of 18802 G.R.T. built 1949 at of 12027
net tons register, or thereabouts, and guaranteed One of 480 lbs of Heavy Grain 10 percent more or less capacity and One of Bale of Oats.
10 per cent more or less capacity, classed Highest in Lloyds or equiv
and COOK INDUSTRIES, INC. Charterers.

That the said Steamship being tight, staunch and strong, and in every way fitted for the voyage, with liberty to take outward cargo to 1/2 safe berths, 1 safe port U.S. GULF, excluding Brownsville, with New Orleans/Destrehan/Am./Myrtle Grove/ Reserve counting as one port
for owners' benefit, shall with all convenient speed sail and proceed to
and there load, always afloat, from said Charterers, or their agents, a full and cargo subject to limits above guaranteed of WHEAT, and INDIAN CORN, and
14,000 Metric Tons, 5% more or less, quantity at Owners' option,
OATS SOYBEANS in bulk, to be naturally separated by holds from any other cargo.
Unless sooner commenced, Charterers to give Owners notice of readiness after receipt of notice of arrival at port of call in the United States, if on ballast, on or before the ninety noon on the day of completion of such cargo or at the option of Owners, at any time thereafter, when vessel will be given before 17 o'clock A.M. If not already given, the day on which Owners notify Charterers that vessel will be ready to load under this charter. Vessel to load under instructions of Charterers' Agents, at her expense and to comply with their rules, not exceeding what she can reasonably stow and carry over and above her Cabin, Tackle, Apparel, Provisions, Fuel and Furniture, and being so loaded shall the master proceed to
(NOT West African Ports) (NOT Persian Gulf) (NOT Spain GLASGOW, BELFAST, DUBLIN, HULL, NEWCASTLE, LEITH, PLYMOUTH, SOUTHAMPTON, LONDON (excluding Surrey Commercial Docks) or so near thereto as she can always lie and deliver her cargo always afloat at the port in the United Kingdom or Continental Europe West of England Coast Trade Association)
1/3 safe berths, 1 safe port FORMOSA

having been
one Port or Ports or so near thereto as she can always lie and deliver her cargo always afloat at the port in the United Kingdom or Continental Europe West of England Coast Trade Association) (but free of extra freight at Cape of Good Hope) and deliver the same, agreeable to Bills of Lading, or being paid freight, in British sterling or its equivalent, as follows:
SEVEN DOLLARS AND FIVE CENTS ($7.75) per ton of 2240 lbs.
all English origins Delivered.
Charterers have the privilege of ordering
in addition to rate of freight shall be more per quarter more than the above rate.
Freight to be full[illegible]id in New York, in U.S. Currency, on surrender of signed Ocean Bill[illegible]ding, discountless and non-returnable, vessel and/or cargo lost or not lost, freight deemed earned as cargo is loaded aboard.

or their agents'

Captain to call at Charterers Office, as required, and sign Bills of Lading as presented, without prejudice to this Charter Party, any deficiency to be paid at Port of Loading (which time insurance and engine surprises or and also estimated freight to be settled there before the Vessel clears at the Custom House) by Captain's draft on Charterers (if so required). Cargo how to be stowed first days after arrival at Port of Discharge.

Stevedores employed by own risk to be approved by Charterers.

Steamer is included according to berth terms, with customary berth despatch and [illegible] detention longer than 3 days, Sundays and holidays excepted. Charterers to pay demurrage at the rate of [illegible] per ton per day, or pro rata, payable day by day, prorated for [illegible] and shall receive by deduction from freight or otherwise.

Expectation of the Vessel's readiness to be delivered at the office of the Charterers or their agents, at or before 4 P.M. (local or before 12 M., noon, if on Saturday) Vessel having been entered and [illegible] cleared, accomplished by pass of the Inspector of Vessel's readiness to commence loading, and the lay days will run as follows: 1 A.M. from the above notice day.

Time for loading, if required by Charterers, not to commence before the 23rd day of December, 19 71

Should the Steamer not be passed by Board of Underwriters' Surveyor as ready for cargo at her Loading Port before 12 o'clock noon on the [illegible] day of December 19 71, followed by the presentation of said Surveyor's pass to the Charterers or their agents at their office before said hour, the Charterers or their agents shall at said hour and at any time after not later than the presentation of the Surveyor's pass at said office, have the option of cancelling this Charter Party.

It is also mutually agreed that this contract shall be completed and be superseded by the signing of Bills of Lading on the same terms as under here mentioned the usual form of Bills of Lading used at port of destination, or one to which there is most regular line of steamers from loading port, the owners hereby to be the option of the agents of Charterers, which Bills of Lading shall however contain the following covenants:

1. "It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause or wheresoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrest and restraint of princes, rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by collisions, stranding or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other servants of the shipowner, even when acting for the benefit of the owners of the ship or any of them, or by the Ship's Husband or Manager."
2. "General Average shall be payable according to York/Antwerp Rules 1950 in New York
required by master or agents. Whenever shall have exercised due diligence to render the steamer in all respects seaworthy and to have had properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the consignees or owners of the cargo shall, nevertheless, pay average and special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, and with the same force and effect as to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness."
3. "It is also mutually agreed that this contract is subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1851, and entitled 'An Act Relating to Navigation of Vessels, etc.'"
4. "Cargo to be received and delivered as fast as vessel can deliver during ordinary working hours any custom of the port to the contrary notwithstanding, but receivers of the cargo are in no case obliged to take delivery at night without their consent, and in any event the steamer must bear all extra expenses incurred by working at night. Time lost to be customarily stipulated in all Bills of Lading, except those for British Channel ports."
5. "In the event of steamer being ordered to discharge in Scandinavia, The Sound, Baltic or Gulf of Finland, or, if ordered inside Gibraltar, Steamer to have the privilege of coaling en route".
6. "Vessel to have a lien on the cargo for all freight, dead freight, demurrage or average" except for freight, deadfreight and demurrage
Charterers' liability under this Charter to cease on cargo being shipped.
The said Charterers, or their agents, are to have the privilege of transferring this Charter to others guaranteeing to the ship owner the due fulfillment of this Charter.
Cash for Vessel's ordinary disbursements at Port of Loading to be advanced by Charterers, if required by Master, at current rate of exchange, subject to insurance and two and a half per cent commission.
A commission of 1-1/4% is due and payable on vessel being loaded to CHARTERERS, INC., and the customary freight brokerage is due on signing of the Charter Party on gross freight, dead freight and demurrage. Vessel lost or not lost, when agents at Port of Loading are to attend to ship's business on all customary terms.
Penalty for non performance of this agreement, estimated amount of freight, and 1-1/4% Address Commission to Charterers.
If the steamer inside at a port in the Gulf, owners to have privilege of coaling at Norfolk or Newport News.

THIS CHARTERPARTY INCLUDES CLAUSES NOS. 7 THROUGH 22 INCLUSIVE, AS ATTACHED, WHICH ARE TO BE CONSIDERED AS FULLY INCORPORATED HEREIN.

COOK INDUSTRIES, INC.

EXHIBIT "3"

BY: [signature]

EDDIE'S SHIPPING AGENCY, INC.
FOR & ON BEHALF OF OWNERS
AS PER LETTER AUTHORITY - AS AGENTS

[signature]
as agents only, without responsibility of

BY [illegible] - CHAIRMAN

WE HEREBY CERTIFY, That this is a true and correct copy of the original Charter Party, at [illegible] office.

BROKERS

CABLE "SPACESHIP" "BABYLON"

WESTERN UNION TELEX: 96-1490
TELEPHONES N. Y. CITY: 212-895-6470
OUT-OF-TOWN: 516-669-6900

SPACEBROKERS, INC.
STEAMSHIP AND CARGO BROKERS
400 WEST MAIN STREET - P. O. BOX 518
BABYLON, N. Y. 11702

February 24, 1972

Addendum No. 1

m.s. "NORMA"
C/P dated 12/16/71 - Contract No.C-1881

A. With reference to Charterparty dated New York, December 16, 1971, between AUSTIN NAVIGATION CORPORATION LTD., Monrovia, Liberia, Owners, and COOK INDUSTRIES, INC., Charterers, it is this day mutually agreed as follows:

1. Clause 10 of the subject Charterparty is hereby amended to read: "Vessel to be discharged with customary quick despatch" instead of 1500 Metrics, free discharge. Accordingly, there will be no demurrage/despatch at discharge port.

B. All other terms and conditions of this C/P unchanged.

COOK INDUSTRIES, INC.

BY: John L Jackson

EDDIE'S SHIPPING AGENCY, INC.
FOR & ON BEHALF OF OWNERS
AS PER LETTER AUTHORITY

BY: W. H. EDDIE HSU - CHAIRMAN
AS AGENTS

7. Owners have the option to complete with cargo to Japan or Korea but if required by Charterers Formosa to be first port of discharge.

8. Owners guarantee that this vessel has not called at a Cuban or North Vietnam port since January 1, 1963 and presently has no commitment to call at a Cuban or North Vietnam port subsequent to this voyage.

9. Cargo to be loaded according to berth terms with customary berth despatch within a total of five (5) weather working days of 24 consecutive hours, Sundays and holidays excepted. If longer detained, Charterers to pay demurrage at the rate of FIFTEEN HUNDRED DOLLARS ($1500.00) U.S. Currency per day or pro rata for part of a day provided such detention shall occur by default of Charterers or their agents. If sooner loaded, Owners to pay Charterers despatch money at the rate of SEVEN HUNDRED FIFTY DOLLARS ($750.00) U.S. Currency per day or pro rata for part of a day for all laytime saved in loading.

10. Cargo to be discharged by Receivers' stevedores free of risk and expense to the vessel at the average rate of 1500 Metric Tons per weather working day of 24 consecutive hours, Sundays and holidays excepted. If longer detained, Charterers/Receivers to pay demurrage at the rate of FIFTEEN HUNDRED DOLLARS ($1500.00) U.S. Currency per running day or pro rata for part of a day for all time used in excess of allowed laytime. If sooner despatched, Owners to pay Charterers/Receivers despatch money at the rate of SEVEN HUNDRED FIFTY DOLLARS ($750.00) U.S. Currency per day or pro rata for part of a day for all laytime saved. Owners guarantee three (3) hatches available continuously for discharge. Owners guarantee to provide eight (8) vacuvators and provide power and labor to operate them at Owners' expense, if required. Owners further guarantee that vacuvators will discharge at a Minimum rate of 25 Metric Tons per hour per vacuvator.

11. Laydays are not reversible.

12. Overtime to be for account of party ordering same. Officers' and crew's overtime always to be for Owners' account.

13. Lighterage, if any at discharge port, to be at Owners' risk and expense and t

14 At discharge port, vessel to open and close hatches at vessel's time and expense.

15. Shifting between loading berths and between discharging berths to be for vessel's account and time used to count as laytime.

16. Vessel to be left in safe, seaworthy trim for shifitng between loading berths and/or between discharging berths to Master's satisfaction.

17. Owners' agents to be employed at loading and discharging ports.

18. Any extra insurance on cargo due to vessel's ownership, age, flag or classification to be for Owners' account.

SPACEBROKERS, I..C.
s.s. "NORMA", Charterparty dated December 16, 1971, Contract No. C-1881

19. 1. Notwithstanding any custom of the port to the contrary, Saturday shall not count as laytime at loading and discharging port or ports where stevedoring labor and/or grain handling facilities are unavailable on Saturday or availabl only at overtime and/or premium rates,
2. In ports where only part of Saturday is affected by such conditions as described under "1" above, laytime shall count until expiration of the last straight time period.
3. Where six or more hours of work are performed at normal rates, Saturday shall count as a full layday.

20. At loading port notification of the vessel's readiness must be delivered at th office of the Charterers or their agents at or before 4 p.m. (or at or before 12 noon if on Saturday) vessel also having been entered at the Custom House accompanied by pass of the National Cargo Bureau Inspector of vessel's readiness in all compartments and with USDA Weevil Free Certificate and the laydays will then commence at 7 a.m. on the next business day whether in berth or not. At discharge port, notification of the vessel's readiness to discharge must be delivered at the office of the Receivers or their agents at or before 4 p.m (or at or before 12 noon if on Saturday) vessel also having been entered at the Custom House and the laydays will then commence at 7 a.m. on the next business day whether in berth or not.
Notice of readiness at port or ports of load and discharge is only to be tendered on official business days during office hours but not after 4 p.m. an during office hours on Saturday but not after 12 noon and is not acceptable on Sundays and holidays.

21. Owners guarantee vessel's draft will not exceed 31' salt water on arrival Formosa.

22. The following clauses, as attached, are to be considered as fully incorporated herein: U.S. Clause Paramount, New Jason Clause, New Both to Blame Collision Clause, P & I Bunker Deviation Clause, Chamber of Shipping War Risk Clauses 1 and 2, New York Produce Exchange Arbitration Clause, Amended Centrocon Strik Clause.

U.S. CLAUSE PARAMOUNT: This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

NEW JASON CLAUSE: In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.
If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

NEW BOTH TO BLAME COLLISION CLAUSE: If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:
"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."
The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

P. AND I. BUNKER DEVIATION CLAUSE: The vessel, in addition to all other liberties, shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever, whether such ports are on or off the direct and/or customary route or routes, to the ports of loading or discharge named in this Charter, and there take oil bunkers in any quantity in the discretion of owners, even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried, whether such amount is or is not required for the chartered voyage.

WAR RISK CLAUSE: (1) No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on sign on Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered. (2) The ship shall have liberty to comply with any orders or directions as to the departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly. - C.S.U.K., London - 26th September 1935.

NEW YORK PRODUCE EXCHANGE ARBITRATION CLAUSE: Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

AMENDED CENTROCON STRIKES CLAUSE: If the Cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the Cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by Riots, Civil Commotions or a Strike or Lock-out on the Railways, or in the Docks, or other loading places, or if the Cargo cannot be discharged by reason of Riots, Civil Commotions, or of a Strike or Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes provided that a Strike or Lock-out of the Shippers' and/or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour as might have been current before the Strike or Lock-out. In case of any delay by reason of the before-named causes, no claim for damages or demurrage, shall be made by the Charterers, Receivers, the Cargo, or Owners of the Steamer. For the purpose however, of settling despatch money accounts any time lost by the steamer through any of the above causes shall be counted as time used in loading, or discharging, as the case may be.

BEST COPY AVAILABLE

SCHEDULE "A"

B/L				
7	1,000	M/T	No. 2 yellow soybeans	Shui Fa Oil Mill Co. Ltd.
8	947.750	"	" " "	" " " " " "
4	400	"	" " "	Huey Feng Oil Mill Co. Ltd.
5	440	"	" " "	" " " " " "
11	707.250	"	" " "	Hui Shung Solvent Oil Co.
6	600	"	" " "	" " " " "
12	225	"	" " "	Hsie Cheng Oil Mill Corp.
13	300	"	" " "	" " " " "
15	1,675	"	" " "	Heng Lung Oil Mill Co. Ltd.
14	2,000	"	" " "	" " " " " "
16	1,300	"	" " "	Yuan Yi Oil Industry Co. Ltd.
17	1,325	"	" " "	" " " " " "
9	1,215	"	" " "	King Tai IH Oil Factory Co. Ltd.
10	1,200	"	" " "	" " " " " "
1	565	"	" " "	King Tai Yi Trading Co. Ltd.
2	400	"	" " "	" " " " " "
2	400	"	" " "	" " " " " "

BALTIMORE FORM C

BERTH TERM GRAIN BILL OF LADING

391a

SHIPPED, in apparent good order and condition, by [illegible] INDUSTRIES, INC.

on board the good steamship or motor vessel, called the "[illegible]" (LYB. FLAG)

now lying in the port of [illegible], LOUISIANA and bound for KAOHSIUNG, TAIWAN

viz: THIRTY SIX THOUSAND SEVEN HUNDRED FORTY FIVE BUSHELS TWENTY FOUR POUNDS
([illegible]) NO. 2 YELLOW SOYBEANS IN BULK NET/GRO 2,204,72[illegible] POUNDS
[illegible] LONG TONS = 1,000.000 METRIC TONS

Being marked and numbered as herein, and to be delivered in like good order and condition at the aforesaid Port of AS ABOVE

(the dangers of the Seas only excepted), unto ORDER OF: BANK OF AMERICA NT&SA, TAIPEI

or to his or their Assigns, he or they paying freight for the said goods at the rate of FREIGHT PREPAID

QUANTITY, DESCRIPTION AND STOWAGE

[illegible] BUSHELS NO. 2 YELLOW SOYBEANS IN BULK

STOWED IN HOLDS NOS. 1,3,5

NOTIFY: BANK OF AMERICA NT&SA, TAIPEI AND
CHINA TRADE & DEVELOPMENT CORP.
3RD FLOOR, 65, KUEI CHIEH RD., TAIPEI
R/D:
SUBJECT TO L/C [illegible] LTD

ON BOARD: JANUARY 3, 1972
[illegible], LOUISIANA
[illegible], AS AGENTS

BY: [signature]

NOT NEGOTIABLE

ALL TERMS CONDITIONS AND EXCEPTIONS AS PER CHARTER PARTY DATED [illegible] DECEMBER 16, 1971

AND ANY ADDENDA THERETO TO BE CONSIDERED AS INCORPORATED HEREIN AS IF FULLY WRITTEN, ANYTHING TO THE CONTRARY CONTAINED IN THIS BILL OF LADING NOTWITHSTANDING.

1. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

2. Each Bill of Lading covering the hold or holds enumerated herein to bear its proportion of shortage and/or damage if any incurred.

3. Shipper's weight, quantity and quality unknown.

4. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause whatsoever occurring, by barratry of the master or crew, by enemies, pirates or robbers, by arrests and restraint of Princes, rulers or people, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenance, by collisions, stranding or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment, of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them, or by the Ship's Husband or Manager).

5. General Average shall be payable according to the York/Antwerp Rules, 1950. Average Bond with values declared therein to be signed, also sufficient security to be given as required by Master or Agents. If the owner shall have exercised due diligence to make the Steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the consignees or owners of the cargo shall, nevertheless pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from, or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

(See over)

In Witness Whereof, the Master or Agent of said vessel hath affirmed to [illegible] Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void.

[illegible] AS AGENTS

Dated at [illegible]

[signature]

FOR THE MASTER

Set No.

LX11137 "5"

[illegible] BOARD OF TRADE

[illegible] OFFICIAL WEIGHT CERTIFICATE [illegible]

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
[illegible]	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder to weigh grain. That on the above date I personally witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

BILL OF LADING Holds Nos. 1,3,5.

3,000,449 POUNDS

53,157/29/30 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

[signature]
AUTHORIZED WEIGHER

COPY—NOT NEGOTIABLE

EX. D-1 EXHIBIT 6A

[illegible] BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-2

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-71	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder to weigh grain. That on the above date I personally witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

BILL OF LADING Holds Nos. 1,3,5.

3,034,409 POUNDS

53,740/09/30 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

[signature]
AUTHORIZED WEIGHER

COPY—NOT NEGOTIABLE

EX. D-2 EXHIBIT 6B

393a

DESTREHAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-3

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-72	DAVISIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including deductions, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

1,331,969 POUNDS

30,266/09/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX D-3

EXHIBIT 6C

DESTREHAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-4

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-5-72	DAVISIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including deductions, if any, of each grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

4,294,332 POUNDS

71,570/32/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel K. Willis
CHIEF WEIGHMASTER

LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX D-4

EXHIBIT 6D

394a

DESTREHAN BOARD OF TRADE

OFFICIAL WEIGHT CERTIFICATE No. 380-5

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-4-72 | LOCATION BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for such warehouses thereunder, by which order that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, if any, of such grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

2,382,126 POUNDS

43,035/23/50 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel H. Willis
DULY WEIGHMASTER

[signature]
LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX. D-5 EXHIBIT 6E

DESTREHAN BOARD OF TRADE

"COPY" OFFICIAL WEIGHT CERTIFICATE No. 619-6

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE 1-3-72 | LOCATION BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for such warehouses thereunder, by which order that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including dockage, if any, of such grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

1,137,400 POUNDS

19,201/20/50 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel H. Willis
DULY WEIGHMASTER

[signature]
LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX D-6 EXHIBIT 6F

DESTREHAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 395a

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-72	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including leakage, if any, of such grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

3,102,362 POUNDS

133,039/22/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel E. Willis
CHIEF WEIGHMASTER

W J Dent Jr
LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX D 7 EXHIBIT 6G

DESTREHAN BOARD OF TRADE

"EXPORT" OFFICIAL WEIGHT CERTIFICATE No. 619-8

UNITED STATES WAREHOUSE ACT, GRAIN WEIGHT CERTIFICATE

DATE	LOCATION
1-3-72	BAYSIDE ELEVATOR CO. A Division of Bayside Warehouse Co. — Reserve, Louisiana

I hereby certify that I hold a license under the United States Warehouse Act, and the regulations for grain warehouses thereunder, to weigh grain; that on the above date I actually witnessed and supervised the weighing of the following lot or parcel of grain at the above named elevator, a warehouse licensed under said Act and regulations; and that the net weight, including leakage, if any, of such grain delivered on the following vessel is that stated below:

KIND OF GRAIN Soybeans

VESSEL S/S NORMA

STOWAGE Holds Nos. 1,3,5.

5,787,402 POUNDS

96,456/42/60 BUSHELS

FOR ACCOUNT OF Cook Industries, Inc.

Daniel E. Willis
CHIEF WEIGHMASTER

W J Dent Jr
LICENSED WEIGHER

COPY — NOT NEGOTIABLE

EX D 8 EXHIBIT 6H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SHIN MA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.

-and-

AUSTEN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250 (CES)

AFFIDAVIT

- X

STATE OF LOUISIANA)
: SS.:
PARISH OF ST. JOHN THE BAPTIST)

DANIEL K. WILLIS, being duly sworn deposes and says:

1. That he is the Chief Weighmaster of the Destrehan Board of Trade, a non-profit, official inspection agency licensed by the United States Department of Agriculture to certify quantity and quality of bulk grain cargo for export and domestic shipments from the port of Reserve, Louisiana, and that he makes this affidavit based upon personal knowledge.

2. I have been a licensed weigher for the past 15 years and am now employed as chief weighmaster of the Destrehan Board of Trade.

3. At the time of the loading of the M.V. Norma

on January 4th and 5th, 1972, I personally supervised the weight certification of the loading from grain elevators and can state that an official licensed weigher of Destrehan was at all times on hand to ensure the correctness of the weight certifications.

4. The scales used in weighing the cargo as discharged from the elevators had at that time been certified by both the State of Louisiana and various other private concerns as accurate within acceptable limits for weighing bulk grain.

5. It is my personal belief that the weight certificates for soybean cargo loaded aboard the M.V. Norma dated January 5, 1972 and numbered 619-1 through 619-8 inclusive, accurately reflect the true amount of grain loaded aboard that vessel.

Daniel K. Willis

Sworn to before me
this day of January, 1974.

Notary Public

398a

Survey Report

International Surveyor Co.

國際公證有限公司

台北市漢口街一段八十巷十二號三樓
3rd Floor, 12, Lane 80, Hankow Street, Taipei, Taiwan
TEL:27506

This report is issued in good faith and to the best of our knowledge and ability but without responsibility on our part.

No. ISC-72-114

Date: April 22nd 1972

COMMODITY: No.2 Yellow Soybeans in bulk.

CONSIGNEE & QUANTITY:

Shui Fa Oil Mill Co., Ltd.	1,947.750 M/Tons.
Huey Feng Oil Mill Co., Ltd.	840.000 "
Hui Shung Solvent Oil Co., Ltd.	1,307.250 "
Hsie Cheng Oil Mill Corp.	525.000 "
Heng Lung Oil Mill Co., Ltd.	3,675.000 "
Yuan Yi Oil Industry Co., Ltd.	2,625.000 "
King Tai Ih Oil Factory Co., Ltd.	2,415.000 "
King Tai Yi Trading Co., Ltd.	1,365.000 "
Total:	14,700.000 M/Tons.

UNDERWRITERS: South China Insurance Co., Ltd. Taipei

CARRIER: ex s.s. "NORMA" arrived at Kaohsiung on March 2nd 1972 from New Orleans U.S.A.

ORIGINAL

THIS IS TO CERTIFY THAT we, the undersigned Cargo Surveyors, at the request of Messrs. South China Insurance Co., Ltd., Taipei, did proceed at Wharf No. 32 & 34, Kaohsiung Harbour, Kaohsiung and on board the m.v. "NORMA" from the days March 28th through April 15th 1972 for the purpose of inspection, supervise discharging, bagging, tallying and weighing of the above-mentioned cargo. Hereby we report as follows:-

DRAFT SURVEY: Draft reading was effected by us with the Chief Officer of M.V."NORMA" before and on completion of discharging. The draft reading report was attached hereunder for your reference.

STOWAGE: The Soybeans in bulk was stowed in the vessel's holds Nos. 1, 3 and 5.

CONDITION:

1. Upon openning the hatches, we found that the mildewed beans in Hatch No.3 was caused to leaked with sea water from hatch cover, so the 311 bags(or 24.880 M/T) of mildewed beans were found during discharging.
2. Hatch Nos. 1 & 5 were found to be in apparent good condition.
3. We enclosed herewith one sheet of Damage Report is signed by Chief Officer of the m.v. "NORMA".

DISCHARGING: The Soybeans in bulk were discharged by means of Grab-Bucket Machine. The bulky cargo stowed in three holds of the vessel were respectively grabed with Grab-Bucket and discharged, then bagged on the quay.

Commenced at 1830 hrs. March 28th 1972.
Completed at 0700 hrs. April 15th 1972.

- - - to be continued - - -

EXHIBIT "8"

Survey Report

國際公證有限公司

International Surveyor Co.

台北市漢口街一段八十巷十二號三樓

3rd Floor, 12, Lane 80, Hankow Street, Taipei, Taiwan

TEL:27508

This report is issued in good faith and to the best of our knowledge and ability but without responsibility on our part.

No: ISC-72-114

Date: April 22nd 1972

WEIGHING: 100% weighing was effected by us at the captioned time and place. Each and every bag was tested and well-balanced with platform scale which were constantly tested for accuracy during the weighing. A uniform net weight of 80.0 kgs. of Soybeans in bulk were bagged and weighed. The quantity is specified as follows:

Godown No.	Description	No. of Bags	Net Weight
31-2	Sound beans.	98,681 Bags.	7,894.4800 M/T.
	Mildewed beans.	301 "	24.0800 "
	Husks of Soybeans(No uniform of net weight per bag).	161 "	9.6106 "
32-2	Sound beans.	28,340 "	2,267.2000 "
34	Sound beans.	36,866 "	2,949.2800 "
	Mildewed beans.	10 "	0.8000 "
	Husks of Soybeans(No uniform of net weight per bag).	6 "	0.3194 "
Truck	Sound beans.	16,250 "	1,300.0000 "
	Total:	180,615 Bags.	14,445.7700 M/T.

ORIGINAL

COMPARISON:

a. By Weighing:

Total B/L Quantity:	14,700.000 M/T.
Total Received Soybeans:	14,445.770 "
Shortage in Weighing:	254.230 M/T

b. By Draft Reading:

Total B/L Quantity:	14,700.000 M/T.
Total Discharged by Draft Reading:	14,504.280 "
Shortage in weight:	195.720 M/T.

c. Total Quantity Discharged by Vessel's Draft: 14,504.280 M/T.
Total Quantity Discharged by Weighing: 14,445.770 "
Difference: 58.510 M/T

APPORTIONMENT: Unit - M/T.

Policy No.	Consignee	B/L Q'ty	Sound Beans	Mildewed Beans	Husks of Beans	Shortage
MN71/34631	Shui Fa	1,947.750	1,909.452	3.297	1.315	33.686
MN71/34632	Huey Feng	840.000	823.486	1.417	0.568	14.527
MN71/34633	Hui Shang	1,307.250	1,281.546	2.213	0.883	22.608
MN71/34634	Hsie Cheng	525.000	514.676	0.889	0.355	9.080
MN71/34635	Heng Lung	3,675.000	3,602.739	6.221	2.482	63.558
MN71/34636	Yuan Yi	2,625.000	2,573.385	4.443	1.774	45.398
MN71/34637	King Tai Ih (Oil Factory)	2,415.000	2,367.515	4.088	1.631	41.766
MN71/34638	King Tai Yi (Trading Co.)	1,365.000	1,338.159	2.312	0.922	23.607
	Total:	14,700.000	14,411.958	24.880	9.930	254.230

* Ratio of Shortage: 1.729459%.

* * * THE END * * *

INTERNATIONAL SURVEYOR CO.

L. L. Kang

Date: _____

DRAFT READING REPORT

APPLICANT: King Tai Yi Traing Co., Ltd. NAME OF VESSEL: Lorna

COMMODITY: YE Soyabeans in bulk VOY. NO.: _____ FLAG: Liberian

B/L. QUANTITY: 14,700 Metric tons ARRIVED ON: March 6th'7 FROM New Orleans

PORT OF SURVEY: Kaohsiung SAILING ON: _____ TO _____

	BEFORE DISCHARGE/LOADING	AFTER DISCHARGE/LOADING
Date:	March 28th	April 14th
Density of sea water:	1022	1022
Draft: Fore:	33' 5".5	7' 6"
Aft.:	33' 6".5	23' 6"
Mean:	33' 6"	15' 6"
Mid-ship: port side.	33' 11"	15' 3"
" " : starboard.	32' 7"	14' 9"
Mean:	33' 3"	15' 0"
Mean of Means:	33' 4".5	15' 3"
Mean Draft corrected:	33' 3".75	15' 1".5
Displacement/Dead weight:	36,000 L/Tons.	15,493 L/Tons.
Correction for Density:	- 108 L/Tons.	- 46 L/Tons.
" for Stem/Trim:	/Tons.	/Tons.
Corrected Displacement/Dead weight:	35,892 L/Tons.(A)	15,447 L/Tons(B)
Non-Cargo Weight on board:		
Fuel Oil:	210 L/Tons.	210 L/Tons.
Fresh Water:	140 L/Tons.	600 L/Tons.
Boiler Water:	/Tons.	/Tons.
Ballast Water:	/Tons.	5,535 L/Tons.
Others: Maize in bulk	12,164.3356 L/Tons.	6,345 L/Tons.
Total:	12,514.3356 L/Tons.(a)	6,345 L/Tons.(b)

SUBJECT CARGO DISCHARGE/LOADING: 14,275.1644 L/Tons or _____ M/Tons.

(Based on the ship's scales provided on board)

"A" International Surveyor Co.

Chief Officer

Surveyor

INTERNATIONAL SURVEYOR CO., LTD.

DAMAGE REPORT

Date: April 15, 1972.

Re: M.S. " NORMA " carried 14,720.060 M/T
of Yellow Soybeans in bulk from New
Orleans U.S.A., at March 28, 1972
berthed at Pier No. 32, Kaohsiung Harbour.

Description of Goods	Quantity	Net Weight
Mildewed Soybeans	311 bags. @ 80 kgs.	24,880 kgs.
Total:	311 bags. @ 80 kgs.	24,880 kgs.

INSPECTION: The Mildewed Soybeans that found by us after open hatch cover at hatch No. 3 and we found Mildewed Soybeans due cause by hatch cover was leakage.

" NORMA "

.....
Chief Mate.

INTERNATIONAL SURVEYOR CO.

TEL 52579

.....
Surveyor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HSIN FA OIL MILL CO. LTD., et al, Plaintiffs, -against- M/S "NORMA", her engines, etc., -and against- AUSTIN NAVIGATION CORP. LTD., Defendant and Third-Party Plaintiff, -against- COOK INDUSTRIES INC., Third-Party Defendant.	73 Civ. 250 (CES)

PLAINTIFFS ANSWERS
TO INTERROGATORIES

Plaintiffs answering interrogatories propounded by defendant and third-party plaintiff, state:

1. For the three year period immediately prior to the voyage in suit, the following are shipments of No. 2 yellow soybeans plaintiffs imported from the United States:

a. S.S. "HINLLY" arrived at Kaohsiung on March 28th, 1970

Shipment: During Jan. 15-31, 1970

Discharged Quantity: 14,068.400 M/T

B/L Quantity: 14,151.290 M/T

Shortage: 82.890 M/T

Percentage of Loss: 0.5859438

b. S.S. "ARANETA MA-AO" arrived at Kaohsiung on May 4, 1970

Shipment: During March 5-20, 1970

B/L Quantity: 14,405.224 M/T

Discharged Quantity: 14,372.800 M/T

Shortage: 32.424 M/T

Percentage of Loss: 0.225%

c. S.S. "JEANINE" arrived at Kaohsiung on July 11, 1970

Shipment: During May 1-30, 1970

B/L Quantity: 13,775.000 M/T

Discharged Quantity: 13,550.160 M/T

Shortage: 224.840 M/T

Percentage of Loss: 1.63223%

d. S.S. "ISLAND SKIPPER" arrived at Kaohsiung on Aug. 17, 1970

Shipment: During July 20-Aug. 10, 1970

B/L Quantity: 14,175.000 M/T

Discharged Quantity: 14,090.000 M/T

Shortage: 85.000 M/T

Percentage of Loss: 0.599647%

e. S.S. UNION COMPANION" arrived at Kaohsiung on Oct. 6, 1970

Shipment: During Aug. 25-Sept. 15, 1970

B/L Quantity: 9,957.361 M/T

Discharged Quantity: 9,729.521 M/T

Shortage: 227.521 M/T

Percentage of Loss: 2.28495%

BEST COPY AVAILABLE

f. S.S. "EVERPEACE" arrived at Kaohsiung on Dec. 17, 1970

Shipment: During Nov. 5-25, 1970

B/L Quantity: 14,314.714 M/T

Discharged Quantity: 14,298.080 M/T

Shortage: 16,634 M/T

Percentage of Loss: 0.116202%

g. S.S. "CHUNGKING VICTORY" arrived at Kaohsiung on March 7, 1971

Shipment: Jan. 20-Feb. 5, 1971

B/L Quantity: 9,508.435 M/T

Discharged Quantity: 9,447.760 M/T

Shortage: 60.675 M/T

Percentage of Loss: 0.6381176%

h. S.S. "BACOLOD" arrived at Kaohsiung on April 10, 1971

Shipment: Feb. 20-Mar. 10, 1971

B/L Quantity: 14,753.7714 M/T

Discharged Quantity: 14,574.240 M/T

Shortage: 179.5314 M/T

Percentage of Loss: 1.216851%

i. S.S. "UNION FRIENDSHIP" arrived at Kaohsiung on May 26, 1971

B/L Quantity: 13,999.981 M/T

Discharged Quantity: 13,965,600 M/T

Shortage: 34.381 M/T

Percentage of Loss: 0.2455789%

j. S.S. "HAI HSIN" arrived at Kaohsiung on Aug. 19, 1971

Shipment: July 10-31, 1971

B/L Quantity: 4,061.257 M/T

Discharged Quantity: 3,984.320 M/T

Shortage: 76.937 M/T

Percentage of Loss: 1.8944135%

k. S.S. "HAI CHIEN" arrived at Kaohsiung on Oct. 1, 1971

Shipment: Aug. 1-25, 1971

B/L Quantity: 6,938.470 M/T

Discharged Quantity: 6,883.560 M/T

Shortage: 54.910 M/T

Percentage of Loss: 0.7913848%

l. S.S. "FRANCES" arrived at Kaohsiung on Oct. 5, 1971

Shipment: Aug. 20-Sept. 20, 1971

B/L Quantity: 13,650.000 M/T

Discharged Quantity: 13,395.360 M/T

Shortage: 254.640 M/T

Percentage of Loss: 1.8654945%

m. S.S. "NORMA" arrived at Kaohsiung on March 2, 1972

n. S.S. "SCAPWIND" arrived at Kaohsiung on March 12, 1972

Shipment: During Jan. 25-Feb. 10, 1972

B/L Quantity: 14,624.050 M/T

Discharged Quantity: 14,239.720 M/T

Shortage: 383.330 M/T

Percentage of Loss: 2.62816%

o. S.S. "LINDA" arrived at Kaohsiung on May 25, 1972

Shipment: During April 10-30, 1972

B/L Quantity: 16,800.000 M/T

Discharged Quantity: 16,637.920 M/T

Shortage: 162.080 M/T

Percentage of Loss: 0.9648619%

p. S.S. "TUNG LEE" arrived at Kaohsiung on Aug. 25, 1972

Shipment: During July 1-20, 1972

B/L Quantity: 19,852.710 M/T

Discharged Quantity: 19,606.720 M/T

Shortage: 245.990 M/T

Percentage of Loss: 1.239075l6%

q. S.S. "UNION CONCARD" arrived at Kaohsiung on Dec. 18, 1972

Shipment: During Oct. 25-Nov. 15, 1972

B/L Quantity: 10,328.769 M/T

Discharged Quantity: 10,193.360 M/T

Shortage: 135.409 M/T

Percentage of Loss: 1.3109887539%

2. Plaintiffs imported the following shipments of No. 2 yellow soybeans from the United States subsequent to the voyage in suit:

a. S.S. "POLAN" arrived at Kaohsiung on Jan. 4, 1973

Shipment: During Nov. 20-Dec. 30, 1972

B/L Quantity: 14,668.537 M/T

Discharged Quantity: 14,489.630 M/T

Shortage: 178.943 M/T

Percentage of Loss: 1.2199%

b. S.S. "KIMRA" arrived at Kaohsiung on Aug. 25, 1973

Shipment: During July, 1973

B/L Quantity: 12,000.000 M/T

Discharged Quantity: 11,914.320 M/T

Shortage: 85.680 M/T

Percentage of Loss: 0.7140%

c. S.S. "ALIAKMON" arrived at Kaohsiung on Oct. 2, 1973

Shipment: During Aug., 1973

B/L Quantity: 19,800.000 M/T

Discharged Quantity: 19,527.840 M/T

Shortage: 272.160 M/T

Percentage of Loss: 1.374545%

d. S.S. "ALLY" arrived at Kaohsiung on Dec. 15, 1973

B/L Quantity: 17,749.156 M/T

Discharged Quantity: 17,235.985 M/T

Shortage: 514.293 M/T

Percentage of Loss: 2.897562%

e. S.S. "TAILEE" arrived at Kaohsiung on Jan. 4, 1974

B/L Quantity: 19,650.842 M/T

Discharged Quantity: 19,235.280 M/T

Shortage: 415.562 M/T

Percentage of Loss: 2.114728%

f. S.S. "DIANNA" arrived June 22, 1974

Shipment: During May, 1974

B/L Quantity: 27,128.731 M/T

Discharged Quantity: 26,612.534 M/T

Shortage: 516.197 M/T

Percentage of Loss: 1.902768%

g. S.S. "MINLLY" arrived at Kaohsiung on April16, 1974

Shipment: During March, 1974

B/L Quantity: 13,748.657 M/T

Discharged Quantity: 13,798.640 M/T

Excess: 245.940 M/T

h. S.S. "FRANCZS" arrived at Kaohsiung on May 1, 1974

Shipment: During January, 1974

B/L Quantity: 19,051.075 M/T

Discharged Quantity: 18,714.920 M/T

Shortage: 336.155 M/T

Percentage of Loss: 1.764493%

i. S.S. "APOLLON" arrived at Kaohsiung on March 25, 1974

Shipment: During Feb., 1974

B/L Quantity: 19,789.882 M/T

Discharged Quantity: 19,581.360 M/T

Shortage: 217.522 M/T

Percentage of Loss: 1.099157%

j. S.S. "GRETA" arrived at Kaohsiung on May 27, 1974

Shipment: During April, 1974

B/L Quantity: 19,649.823 M/T

Discharged Quantity: 19,308.800 M/T

Shortage: 341.023 M/T

Percentage of Loss: 1.735501%

k. S.S. "IRENE" arrived at Kaohsiung on May 26, 1974

Shipment: During April, 1974

B/L Quantity: 26,955.536 M/T

Discharged Quantity: 26,427.280 M/T

Shortage: 527.856 M/T

Percentage of Loss: 1.958247%

l. S.S. "EVER SURENESS" arrived at Kaohsiung on Dec. 10, 1974

Shipment: During Nov., 1974

B/L Quantity: 14,163.133 M/T

Discharged Quantity: 13,927.640 M/T

Shortage: 190.473 M/T

Percentage of Loss: 1.344836%

m. S.S. "SPARTO" arrived at Kaohsiung on Oct. 25, 1974

Shipment: During Sept. 1974

B/L Quantity: 14,086.745 M/T

Discharged Quantity: 13,949.040 M/T

Shortage: 137.705 M/T

Percentage of Loss: 0.977550%

n. S.S. "ALLY" arrived at Kaohsiung on Dec. 15, 1974

Shipment: During Nov., 1974

B/L Quantity: 26,416.010 M/T

Discharged Quantity: 26,139.821 M/T

Shortage: 276.179 M/T

Percentage of Loss: 1.0455%

o. S.S. "PAULINA" arrived at Kaohsiung on Dec. 23, 1974

Shipment: During Nov., 1974

B/L Quantity: 21,906.370 M/T

Discharged Quantity: 21,586.203 M/T

Percentage of Loss: 1.4615246615%

p. S.S. "OLIVIA" arrived at Kaohsiung on Jan. 13, 1975

Shipment: During Dec., 1974

B/L Quantity: 10,097.070 M/T

Discharged Quantity: 9,926.880 M/T

Shortage: 170.190 M/T

Percentage of Loss: 1.6855%

Dated: New York, New York
May 27, 1975

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Plaintiffs

By _____
A Member of the Firm
Office & P. O. Address
99 John Street
New York, N. Y. 10038
Tel.: 732-4646

TO:
DOUGHERTY, RYAN, MAHONEY, PELLEGRINO
& GIUFFRA
Attorneys for Defendant
[illegible] Fifth Avenue
New York, N. Y. 10036

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL A. SULLIVAN, being duly sworn, deposes and says:

That he is a member of the firm of BIGHAM ENGLAR JONES & HOUSTON, attorneys for plaintiffs herein; that he has read the foregoing answers to interrogatories; and that the same are true to the best of his knowledge, information and belief.

That the sources of deponent's information and the grounds for his belief as to all matters are documents relating to the matter in suit in possession of deponent's firm.

That the reason this verification is made by deponent and not by plaintiffs is that plaintiffs are corporations, none of whose officers are now within this District.

Daniel A. Sullivan

Sworn to before me this
27th day of May, 1975.

Qualified in New York County
Commission Expires March 30, 1977

CABLE ADDRESS
FRIBRENE

412a

TELEPHONE
(212)344-9700

B.E.J. & H.
RECEIVED
1975 JUL 14 AM 8:32
REF'D.
ANS'D.

CONTINENTAL GRAIN COMPANY
2 BROADWAY
NEW YORK, N. Y. 10004

MEMBERS
CHICAGO BOARD OF TRADE
NEW YORK PRODUCE EXCHANGE
KANSAS CITY BOARD OF TRADE
MINNEAPOLIS GRAIN EXCHANGE
DULUTH BOARD OF TRADE
WINNIPEG GRAIN EXCHANGE
OMAHA GRAIN EXCHANGE
ST. LOUIS MERCHANTS EXCHANGE

July 11, 1975

Frederick W. Meeker, Esq.
Hill, Rivkins, Carey, Loesberg & O'Brien
96 Fulton Street
New York, New York 10033

Re: "M.V. NORMA"
Your File 86024-FOB/FWM

Dear Mr. Meeker:

This is in reference to your letter of July 7, 1975 asking for my considered opinion of normal shrinkage for the specific commodity and shipment particulars outlined in your letter.

It is my opinion that normal shrinkage for the set of facts stated should be 1.55%, equivalent to 227.85 metric tons. This calculation takes into account the grab bucket discharge method and the measurement of discharge weights by weighing individual bags.

Yours very truly,

Jack Berg
Vice President

JB:lmf

cc: Dan Sullivan, Esq.
Bigham, Englar, Jones & Houston
99 John Street
New York, New York 10038

Peter Zambito, Esq.
Dougherty, Ryan, Mahoney, Pellegrino & Giuffra
576 Fifth Avenue
New York, New York

MEMO OF LAW BY DEFENDANT AND THIRD PARTY PLAINTIFF WITH COPIES OF A.M.C. DECISIONS ATTACHED (pp. 413a-425a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO., LTD., et al. Plaintiffs,	73 Civ. 250 (CES)
- against -	Consolidated with 73 Civ. 251 (CES
MS "NORMA", her engines, etc.,	
- and against -	
AUSTIN NAVIGATION CORP. LTD., Defendant and Third Party Plaintiff,	
- against -	
COOK INDUSTRIES INC., Third-Party Defendant.	

MEMORANDUM OF LAW
ON BEHALF OF DEFENDANT AND THIRD-PARTY PLAINTIFF,
AUSTIN NAVIGATION, LTD., OWNERS OF THE M/S "NORMA"

STATEMENT

Counsel for the parties hereto have agreed to submit the claim for alleged shortage in a bulk cargo of No. 2 yellow soybeans to the Court for determination based upon an agreed Stipulation of Facts. Said Stipulation was filed with the Court on or about July 16, 1975, and counsel for each of the parties to the litigation is submitting a Memorandum of Law to support its client's position. This

Memorandum is submitted on behalf of the Owners of the M/S "NORMA", Austin Navigation, Ltd. (hereinafter "Austin").

The claim is comprised of two (2) types of alleged damage, only one (1) of which is being submitted to the Court for determination. The portion of the claim being submitted to the Court for determination concerns solely an alleged shortage of 254.230 metric tons at $127.65 per metric ton, or a total claim for alleged shortage of $32,452.46.

FACTS

Cook Industries, Inc. (hereinafter "Cook") third-party defendant and defendant, respectively, in the consolidated actions, contracted with China Trade Development Corporation on November 19, 1971 to sell a shipment of 14,000 metric tons of No. 2 yellow soybeans, 5% more or less. (Ex. "1A" to Stipulation of Facts). Cook thereafter space-chartered the M/S "NORMA" from Austin to carry 14,000 metric tons, 5% more or less, soybeans in bulk from a U.S. Gulf port to Formosa. (Ex. "3" to Stipulation of Facts).

Clause 10 of the said charter party (Ex "3" to Stipulation of Facts) provided that the cargo was to be discharged by the Receiver's stevedores free of risk and expense to the vessel. The plaintiffs in the actions are the Receivers referred to in Clause 10 of the charter party. The cargo in suit was loaded to the vessel at Reserve, Louisiana and was stowed solely in Nos. 1, 3 and 5 holds. No other cargo was

stowed in those holds. (Parag. 13, Stipulation of Facts).

The "NORMA" sailed from Reserve, Louisiana on January 5, 1972 and arrived at Kaohsiung, Taiwan on April 2, 1972. The vessel did not call at any intermediate port to load or discharge cargo. (Parag. 14, Stipulation of Facts).

All cargo stowed in Nos. 1, 3 and 5 holds was discharged by the stevedores at Kaohsiung, and a surveyor to International Surveyor Co., acting on behalf of plaintiffs, was in attendance during the discharging and weighing of the cargo in suit. (Parag. 16 of Stipulation of Facts).

Upon completion of discharge, all the vessel's holds were swept by the stevedores under the supervision of International Surveyor Co., and the vessel's holds were emptied of plaintiffs' cargo (Parag. 17, Stipulation of Facts).

In their Answers to Interrogatories, plaintiffs admit, among other things, the following:

"16. The cargo was discharged from March 28 to April 15, 1972 by means of grab buckets and bagged on the quay.

17. The cargo was weighed immediately upon discharge by use of platform scale...

18. The cargo was bagged on the quay before weighing immediately upon discharge.

19. All the vessel's holds were swept by the stevedore hired by the Port Authority under supervision of

surveyors, International Surveyor Co. The sweepings were normally good and were discharged for apportionment to each consignee.

20. The vessel's holds were empty of plaintiffs' cargo upon completion of discharge."

In subsequent Answers to Interrogatories (Ex. "9" to Stipulation of Facts), plaintiffs identified 16 additional shipments of No. 2 yellow soybeans which they imported from the United States to Kaohsiung between March 28, 1970 and December 18, 1972. The percentage or ratio of loss sustained as to those shipments was as high as 2.62816% (Ex. "9" to Stipulation of Facts, item 1 n). The percentage of loss claimed as to the shipments in suit is only 1.729456% (Ex. "8" to Stipulation of Facts, at bottom of page 2).

The aforesaid Answers to Interrogatories (Ex. "9" to Stipulation of Facts) also identified 15 other shipments of No. 2 yellow soybeans which the plaintiffs imported from the United States to Kaohsiung between January 4, 1973 and January 13, 1975. The percentage or ratio of loss sustained as to said shipments was as high as 2.897562%. (Ex. "9" to Stipulation of Facts, item 2 d.) Again, the percentage or ratio of loss with regard to the shipments in suit was only 1.729456% (Ex. "8" to Stipulation of Facts, bottom page 2).

Plaintiffs' surveyor at Kaohsiung also estimated the shortage by taking a draft reading of the vessel and, on

such basis, calculated the shortage as 195.720 metric tons out of 14,700 metric tons allegedly shipped (Ex. "8", page 2). On this basis, the percentage or ratio of loss computes to 1.33142%.

The mean percentage or ratio of loss based upon the two (2) methods employed by plaintiffs' surveyor, namely, (1) by weighing and (2) by draft reading, is 1.535438%.

Counsel for the parties hereto jointly agreed to retain Mr. Jack Berg, Vice-President of Continental Grain Company, as an expert to express an opinion on the "normal shrinkage", if any, to a cargo of No. 2 yellow soybeans based upon the facts governing their loading, carriage and discharge. A copy of the letter written to Mr. Berg on behalf of counsel for all parties is annexed to this Memorandum, and it will be noted that Mr. Berg was not aware of the actual shortage or loss claimed. He expressed his opinion in a letter dated July 11, 1975 (Ex. 10 to Stipulation of Facts), stating that the normal shrinkage would, in his considered opinion, be 1.55%, equivalent to 227.85 metric tons.

The loss claimed based upon a weighing method is only slightly in excess of the percentage stated by Mr. Berg, while the loss by draft reading as per the report of plaintiffs' surveyor (Ex. "8" to Stipulation of Facts) is less than the percentage estimated by Mr. Berg. The mean percentage between the two (2) methods employed by the

plaintiffs' surveyors, namely, 1.530438%, is almost equivalent to the 1.55% normal shrinkage expressed by Mr. Berg.

Based upon the uncontroverted facts, the only possibilities which logically exist to account for the shortage are:

(1) A lesser quantity than specified in the bills of lading was delivered to the vessel by the shipper-charterer, Cook;

(2) Normal shrinkage or inherent vice of the goods;

(3) As a result of handling in the discharge and subsequent thereto.

The facts and evidence placed before the Court by counsel for the parties disposes of possibilities (1) and (3) by the reason of evidentary data introduced by Cook and plaintiffs, respectively, and thus leads to the inescapable conclusion that the loss was occasioned by normal shrinkage, in line with the considered opinion expressed by Mr. Jack Berg of Continental Grain Company (Ex. "10" to Stipulation of Facts).

FIRST POINT

THE SHIPOWNER IS NOT RESPONSIBLE FOR NORMAL SHRINKAGE OR INHERENT VICE OF THE GOODS

The bills of lading (See Ex. "5" to Stipulation of Facts) incorporated the U.S. Carriage of Goods by Sea Act ("COGSA") in paragraph 1 thereof and, in any event, the Act was applicable of its own force and effect pursuant to

46 U.S. Code, Section 1300.

Section 1304(2)(m) of COGSA provides as follows:

" (2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from -

* * * * * *

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;"

Said defense was raised in the Answer to the Complaint filed on behalf of Austin, specifically in paragraph 11 thereof. In addition, the "q" clause (§1304(2)(q)) was raised as a defense.

Where inherent vice is raised as a defense, the burden of proof resides with cargo to establish that the loss did not arise from an inherent quality or vice of the goods, such as shrinkage. Copco Steel and Engineering Co. v. The Prins Frederik Hendrik, 129 F.Supp 469 (D.C. Mich., 1955); California Packing Corporation v. The Empire State, 180 F.Supp 19 (D.C. Cal., 1960), remanded on other grounds 310 F.2d 206. Plaintiffs have offered no such evidence and have, as a result, failed to sustain their burden of proof, if indeed the facts or evidence permitted.

By plaintiffs' own admission (Ex. "9" to Stipulation of Facts) high percentages of loss have constantly been experienced by the plaintiffs over a five (5) year period commencing March 2, 1970 and ending January 13, 1975, with the ratio of shortage to the quantities shipped being at

times well in excess of the ratio present in the case at bar.

In Pacific Vegetable Oil Corp. v. The M/S "NORSE COMMANDER", 264 F.Supp. 625 (D.C., S.D. Tex., 1966), the Court was confronted with a claim for shortage and damage to a cargo of bulk tallow. In holding for the vessel, the Court stated as follows at page 629:

"The Court is also of the opinion that plaintiff has failed to prove any cargo shortage upon arrival in Rotterdam. The outturn report, based upon the estimated quantity of 12 tons abandoned onboard, indicated a shortage of 3.908 metric tons, or 0.61%. Testimony at the trial was that in ocean shipments of tallow and like material, a shortage of .3% to .4% would be normal. This slight difference does not appear to be of any material significance."

The shipowners' position is further strengthened by the fact that the loss claimed could not have occurred on the voyage, as the vessel proceeded directly to the discharging port after loading the cargo in suit at Reserve, Louisiana and undertook no cargo operations in the interim. (Parag. 14, Stipulation of Facts). It is to be stressed also that, by plaintiffs' own admissions, all of plaintiffs' cargo stowed on board the vessel was discharged and weighed under the supervision of plaintiffs' surveyor, and the vessel's holds were emptied of plaintiffs' cargo upon completion of the discharging operation. (Parags. 16 and 17, Stipulation of Facts) These factors are entitled to great weight. Cf. Dow Chemical Co. v. S.S. Giovannella D'Amico, 297 F.Supp 699 (S.D.N.Y., 1969), wherein the Honorable Milton Pollack of this Court, in holding for defendants, placed much weight

on a certificate issued at the port of discharge which reflected that "after discharging the tanks was [sic] inspected and found empty and dries [sic]". The same situation is in evidence here, and the same result should obtain.

Additionally, in two (2) arbitration decisions reported in the American Maritime Cases, statements bearing on the type of dispute here concerned were made by panels of arbitrators sitting in New York. For instance, in the Unity, 1967 A.M.C. 799, at page 809, the panel of arbitrators, comprised of two (2) admiralty attorneys and a commercial man with a maritime background, stated as follows with regard to a claim for alleged shortage of sugar carried on a FIO basis:

"The claim here does not involve loss or damage from a casualty or accident during the voyage (at least, nothing before us mentions or suggests the happening of any casualty that would cause over 170 tons of sugar to be lost) and in such circumstances the carrier may rebut the cargo claimant's prima facie case with proof that the ship delivered 'all she received'."

See, also, DICARONIA, 1969 A.M.C. 2196, which involved a claim for an alleged 500-ton shortage on outturn of iron scrap cargo. In denying the claim for shortage, a panel of arbitrators in New York stressed that "the ship delivered all the cargo that was on board and no evidence was produced that vessel did, or even had the opportunity to, discharge any of the cargo prior to destination".

Evidence to the effect that the ship delivered all cargo at Kaohsiung that was received at Reserve, Louisiana,

and that there was no opportunity to discharge any of the cargo prior to destination is present here in the form of evidence and admissions from the plaintiffs themselves. That evidence and the admissions by plaintiffs, coupled with the considered opinion of the expert retained by the parties, specifying normal shrinkage should have been 1.55%, leads to the inescapable conclusion that the loss must have occurred as a result of factors inherent in the goods themselves and for which neither the vessel nor her Owners are responsible.

Copies of A.M.C. decisions referred to herein are annexed to this Memorandum.

SECOND POINT

COOK, AS SHIPPER, IS DEEMED TO HAVE GUARANTEED TO AUSTIN, AS CARRIER, THE ACCURACY OF THE QUANTITY AND WEIGHT OF THE CARGO IN SUIT AND MUST INDEMNIFY AUSTIN AGAINST ALL LOSS, DAMAGES AND EXPENSES ARISING OR RESULTING FROM INACCURACIES IN SUCH PARTICULARS

The aforementioned bill of lading, annexed to the Stipulation of Facts as Exhibit "5", reflects that Cook was the shipper of plaintiffs' goods. Said lading incorporates COGSA, which Act applied of its own force and effect, as previously stated herein under FIRST POINT.

Section 1303(5) of the Act provides as follows:

"The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper."

Accordingly, if the Court should find that the shipper delivered to the vessel less than the quantities stated in the bills of lading, then Austin, as shipowner, would be entitled to be indemnified by Cook, as shipper, for all loss, damages and expenses arising or resulting therefrom.

CONCLUSION

THE UNCONTROVERTED FACTS AND EVIDENCE LEAD TO THE INESCAPABLE CONCLUSION THAT THE SHORTAGE CLAIMED RESULTED FROM NORMAL SHRINKAGE, FOR WHICH AUSTIN, AS SHIPOWNER, BEARS NO RESPONSIBILITY AND THE COMPLAINT SHOULD, AS A RESULT, BE DISMISSED. CONVERSELY, IF THE COURT SHOULD FIND THAT COOK, AS SHIPPER, DELIVERED TO AUSTIN LESS CARGO THAN SPECIFIED IN THE BILLS OF LADING, THEN COOK IS LIABLE TO INDEMNIFY AUSTIN, UNDER THE THIRD-PARTY COMPLAINT.

Respectfully submitted,

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA
Attorneys for Defendant and Third-
Party Plaintiff
576 Fifth Avenue
New York, New York 10036

PETER J. ZAMBITO,
Of Counsel

DRAFT

424a

June 23, 1975

Continental Grain Company
Two Broadway
New York, New York

Attention: Mr. Berg

Re: M.V. NORMA
Our File No.: 86024-FOB/FWM

Dear Mr. Berg:

Pursuant to telephone conversation of June 23, we confirm that our office together with the offices of Messrs. Bigham, Englar, Jones & Houston and Messrs. Dougherty, Ryan, Mahoney, Pellegrino & Ciuffra would appreciate your opinion as to what you would consider normal shrinkage to a cargo of # two yellow soybeans, particulars of which are given below:

Commodity # 2 yellow soybeans

B/L Qty.	14,700 MT
Port of Loading	Reserve Louisiana
Date of Loading	January 4/5 1972
Port of Discharge	Kaohsiung
Date of Discharge	March 28/April 15, 1972
Method of Discharge	Grab Bucket
Method of Loading	Direct from Elevators

Pursuant to your request we quote from the discharging survey as to method of discharge:

-cont-

"The soybeans in bulk were discharged by means of Grab-Bucket Machine. The bulky (sic) cargo stowed in the holds of the vessel were respectively grabed (sic) with Grab-Bucket and discharged, then bagged on the quay.

Commenced at 1830 hours March 28, 1972.

Completed at 0900 hours April 15, 1972 100% weighing was effected by us at the captioned time and place. Each and every bag was tested and well-balanced with platform scales which were constantly check for accuracy during the weighing. A uniform net weight of 80.0 kgs. of soybeans in bulk were bagged and weighed the quantity is specified as follows:...".

We enclose for your perusal copies of the weight certificates at the port of loading as well as a representative bill of lading.

Please remit your statement for services along with your findings to this office with copies of those findings to Mr. Dan Sullivan at Bigham, Englar, Jones & Houston and Mr. Peter Zambito at Dougherty, Ryan, Mahoney, Pellegrino & Giuffra.

We thank you for your efforts.

Very truly yours,

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN

BY:

Frederick W. Meeker

FWM:ds

Encl.

MEMO OF LAW ON BEHALF OF DEFENDANT AND THIRD PARTY PLAINTIFF (pp. 426a-436a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO., LTD., et al, Plaintiffs, - against - MS "NORMA", her engines, etc., - and against - AUSTIN NAVIGATION CORP. LTD., Defendant and Third-Party Plaintiff, - against - COOK INDUSTRIES INC., Third-Party Defendant.	73 Civ. 250 (CES) Consolidated with 73 Civ. 251 (CES

MEMORANDUM OF LAW
ON BEHALF OF DEFENDANT AND THIRD-PARTY PLAINTIFF,
AUSTIN NAVIGATION, LTD., OWNERS OF THE M/S "NORMA"

STATEMENT

Counsel for the parties hereto have agreed to submit the claim for alleged shortage in a bulk cargo of No. 2 yellow soybeans to the Court for determination based upon an agreed Stipulation of Facts. Said Stipulation was filed with the Court on or about July 16, 1975, and counsel for each of the parties to the litigation is submitting a Memorandum of law to support its client's position. This

Memorandum is submitted on behalf of the Owners of the M/S "NORMA", Austin Navigation, Ltd, (hereinafter "Austin").

The claim is comprised of two (2) types of alleged damage, only one (1) of which is being submitted to the Court for determination. The portion of the claim being submitted to the Court for determination concerns solely an alleged shortage of 254.230 metric tons at $127.65 per metric ton, or a total claim for alleged shortage of $32,452.46.

FACTS

Cook Industries, Inc. (hereinafter "Cook") third-party defendant and defendant, respectively, in the consolidated actions, contracted with China Trade Development Corporation on November 19, 1971 to sell a shipment of 14,000 metric tons of No. 2 yellow soybeans, 5% more or less. (Ex. "1A" to Stipulation of Facts). Cook thereafter space-chartered the M/S "NORMA" from Austin to carry 14,000 metric tons, 5% more or less, soybeans in bulk from a U.S. Gulf port to Formosa. (Ex. "3" to Stipulation of Facts).

Clause 10 of the said charter party (Ex "3" to Stipulation of Facts) provided that the cargo was to be discharged by the Receiver's stevedores free of risk and expense to the vessel. The plaintiffs in the actions are the Receivers referred to in Clause 10 of the charter party. The cargo in suit was loaded to the vessel at Reserve, Louisiana and was stowed solely in Nos. 1, 3 and 5 holds. No other cargo was

stowed in those holds. (Parag. 13, Stipulation of Facts).

The "NORMA" sailed from Reserve, Louisiana on January 5, 1972 and arrived at Kaohsiung, Taiwan on April 2, 1972. The vessel did not call at any intermediate port to load or discharge cargo. (Parag. 14, Stipulation of Facts).

All cargo stowed in Nos. 1, 3 and 5 holds was discharged by the stevedores at Kaohsiung, and a surveyor to International Surveyor Co., acting on behalf of plaintiffs, was in attendance during the discharging and weighing of the cargo in suit. (Parag. 16 of Stipulation of Facts).

Upon completion of discharge, all the vessel's holds were swept by the stevedores under the supervision of International Surveyor Co., and the vessel's holds were emptied of plaintiffs' cargo (Parag. 17, Stipulation of Facts).

In their Answers to Interrogatories, plaintiffs admit, among other things, the following:

"16. The cargo was discharged from March 28 to April 15, 1972 by means of grab buckets and bagged on the quay.

17. The cargo was weighed immediately upon discharge by use of platform scale...

18. The cargo was bagged on the quay before weighing immediately upon discharge.

19. All the vessel's holds were swept by the stevedore hired by the Port Authority under supervision of

surveyors, International Surveyor Co. The sweepings were normally good and were discharged for apportionment to each consignee.

20. The vessel's holds were empty of plaintiffs' cargo upon completion of discharge."

In subsequent Answers to Interrogatories (Ex. "9" to Stipulation of Facts), plaintiffs identified 16 additional shipments of No. 2 yellow soybeans which they imported from the United States to Kaohsiung between March 28, 1970 and December 18, 1972. The percentage or ratio of loss sustained as to those shipments was as high as 2.628134% (Ex. "9" to Stipulation of Facts, item 1 n). The percentage of loss claimed as to the shipments in suit is only 1.72 4564% (Ex. "8" to Stipulation of Facts, at bottom of page 2).

The aforesaid Answers to Interrogatories (Ex. "9" to Stipulation of Facts) also identified 19 other shipments of No. 2 yellow soybeans which the plaintiffs imported from the United States to Kaohsiung between January 4, 1973 and January 13, 1975. The percentage or ratio of loss sustained as to said shipments was as high as 2.807562%. (Ex. "9" to Stipulation of Facts, item 2 d.) Again, the percentage or ratio of loss with regard to the shipments in suit was only 1.729456% (Ex. "8" to Stipulation of Facts, bottom page 2).

Plaintiffs' surveyor at Kaohsiung also estimated the shortage by taking a draft reading of the vessel and, on

such basis, calculated the shortage as 195.720 metric tons out of 14,700 metric tons allegedly shipped (Ex. "8", page 2). On this basis, the percentage or ratio of loss computes to 1.33142%.

The mean percentage or ratio of loss based upon the two (2) methods employed by plaintiffs' surveyor, namely, (1) by weighing and (2) by draft reading, is 1.535438%.

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The loss claimed based upon a weighing method is only slightly in excess of the percentage stated by Mr. Berg, while the loss by draft reading as per the report of plaintiffs' surveyor (Ex. "8" to Stipulation of Facts) is less than the percentage estimated by Mr. Berg. The mean percentage between the two (2) methods employed by the

plaintiffs' surveyors, namely, 1.530438%, is almost equivalent to the 1.55% normal shrinkage expressed by Mr. Berg.

Based upon the uncontroverted facts, the only possibilities which logically exist to account for the shortage are:

(1) A lesser quantity than specified in the bills of lading was delivered to the vessel by the shipper-charterer, Cook;

(2) Normal shrinkage or inherent vice of the goods;

(3) As a result of handling in the discharge and subsequent thereto.

The facts and evidence placed before the Court by counsel for the parties disposes of possibilities (1) and (3) by the reason of evidentary data introduced by Cook and plaintiffs, respectively, and thus leads to the inescapable conclusion that the loss was occasioned by normal shrinkage, in line with the considered opinion expressed by Mr. Jack Berg of Continental Grain Company (Ex. "10" to Stipulation of Facts).

FIRST POINT

THE SHIPOWNER IS NOT RESPONSIBLE FOR NORMAL SHRINKAGE OR INHERENT VICE OF THE GOODS

The bills of lading (See Ex. "5" to Stipulation of Facts) incorporated the U.S. Carriage of Goods by Sea Act ("COGSA") in paragraph 1 thereof and, in any event, the Act was applicable of its own force and effect pursuant to

46 U.S. Code, Section 1300.

Section 1304(2)(m) of COGSA provides as follows:

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* * * * * *

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;"

Said defense was raised in the Answer to the Complaint filed on behalf of Austin, specifically in paragraph 11 thereof. In addition, the "q" clause (§1304(2)(q)) was raised as a defense.

Where inherent vice is raised as a defense, the burden of proof resides with cargo to establish that the loss did not arise from an inherent quality or vice of the goods, such as shrinkage. Copco Steel and Engineering Co. v. The Prins Frederik Hendrik, 129 F.Supp 469 (D.C. Mich., 1955); California Packing Corporation v. The Empire State, 180 F.Supp 19 (D.C. Cal., 1960), remanded on other grounds 310 F.2d 206. Plaintiffs have offered no such evidence and have, as a result, failed to sustain their burden of proof, if indeed the facts or evidence permitted.

By plaintiffs' own admission (Ex. "9" to Stipulation of Facts) high percentages of loss have constantly been experienced by the plaintiffs over a five (5) year period commencing March 2, 1970 and ending January 13, 1975, with the ratio of shortage to the quantities shipped being at

times well in excess of the ratio present in the case at bar.

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"The Court is also of the opinion that plaintiff has failed to prove any cargo shortage upon arrival in Rotterdam. The outturn report, based upon the estimated quantity of 12 tons abandoned onboard, indicated a shortage of 3.908 metric tons, or 0.61%. Testimony at the trial was that in ocean shipments of tallow and like material, a shortage of .3% to .4% would be normal. This slight difference does not appear to be of any material significance."

The shipowners' position is further strengthened by the fact that the loss claimed could not have occurred on the voyage, as the vessel proceeded directly to the discharging port after loading the cargo in suit at Reserve, Louisiana and undertook no cargo operations in the interim. (Parag. 14, Stipulation of Facts). It is to be stressed also that, by plaintiffs' own admissions, all of plaintiffs' cargo stowed on board the vessel was discharged and weighed under the supervision of plaintiffs' surveyor, and the vessel's holds were emptied of plaintiffs' cargo upon completion of the discharging operation. (Parags. 16 and 17, Stipulation of Facts) These factors are entitled to great weight. Cf. Dow Chemical Co. v. S.S. Giovannella D'Amico, 297 F.Supp 699 (S.D.N.Y., 1969), wherein the Honorable Milton Pollack of this Court, in holding for defendants, placed much weight

on a certificate issued at the port of discharge which reflected that "after discharging the tanks was [sic] inspected and found empty and dries [sic]". The same situation is in evidence here, and the same result should obtain.

Additionally, in two (2) arbitration decisions reported in the American Maritime Cases, statements bearing on the type of dispute here concerned were made by panels of arbitrators sitting in New York. For instance, in the Unity, 1967 A.M.C. 799, at page 809, the panel of arbitrators, comprised of two (2) admiralty attorneys and a commercial man with a maritime background, stated as follows with regard to a claim for alleged shortage of sugar carried on a FIO basis:

"The claim here does not involve loss or damage from a casualty or accident during the voyage (at least, nothing before us mentions or suggests the happening of any casualty that would cause over 170 tons of sugar to be lost) and in such circumstances the carrier may rebut the cargo claimant's prima facie case with proof that the ship delivered 'all she received'."

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Evidence to the effect that the ship delivered all cargo at Kaohsiung that was received at Reserve, Louisiana,

and that there was no opportunity to discharge any of the cargo prior to destination is present here in the form of evidence and admissions from the plaintiffs themselves. That evidence and the admissions by plaintiffs, coupled with the considered opinion of the expert retained by the parties, specifying normal shrinkage should have been 1.55%, leads to the inescapable conclusion that the loss must have occurred as a result of factors inherent in the goods themselves and for which neither the vessel nor her Owners are responsible.

Copies of A.M.C. decisions referred to herein are annexed to this Memorandum.

SECOND POINT

COOK, AS SHIPPER, IS DEEMED TO HAVE GUARANTEED TO AUSTIN, AS CARRIER, THE ACCURACY OF THE QUANTITY AND WEIGHT OF THE CARGO IN SUIT AND MUST INDEMNIFY AUSTIN AGAINST ALL LOSS, DAMAGES AND EXPENSES ARISING OR RESULTING FROM INACCURACIES IN SUCH PARTICULARS

The aforementioned bill of lading, annexed to the Stipulation of Facts as Exhibit "5", reflects that Cook was the shipper of plaintiffs' goods. Said lading incorporates COGSA, which Act applied of its own force and effect, as previously stated herein under FIRST POINT.

Section 1303(5) of the Act provides as follows:

"The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper."

Accordingly, if the Court should find that the shipper delivered to the vessel less than the quantities stated in the bills of lading, then Austin, as shipowner, would be entitled to be indemnified by Cook, as shipper, for all loss, damages and expenses arising or resulting therefrom.

CONCLUSION

THE UNCONTROVERTED FACTS AND EVIDENCE LEAD TO THE INESCAPABLE CONCLUSION THAT THE SHORTAGE CLAIMED RESULTED FROM NORMAL SHRINKAGE, FOR WHICH AUSTIN, AS SHIPOWNER, BEARS NO RESPONSIBILITY AND THE COMPLAINT SHOULD, AS A RESULT, BE DISMISSED. CONVERSELY, IF THE COURT SHOULD FIND THAT COOK, AS SHIPPER, DELIVERED TO AUSTIN LESS CARGO THAN SPECIFIED IN THE BILLS OF LADING, THEN COOK IS LIABLE TO INDEMNIFY AUSTIN, UNDER THE THIRD-PARTY COMPLAINT.

Respectfully submitted,

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA
Attorneys for Defendant and Third-
Party Plaintiff
576 Fifth Avenue
New York, New York 10036

PETER J. ZAMBITO,
Of Counsel

PRE TRIAL MEMORANDUM BY F. W. MEEKER AND AFFIDAVIT OF DANIEL X. WILLIS (pp. 437a-444a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.,

-and-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 251 CES

PRE-TRIAL MEMORANDUM

FACTS

Cook Industries Inc. contracted with the China Trade Development Corporation on November 19, 1971 to sell a shipment of 14,000 metric tons of No. 2 yellow soybeans, plus or minus 5%, upon a C & F, Formosa, basis.

On December 16, 1971 Cook entered into a space charter party with Austin Navigation Corp., Ltd. to carry from Louisiana to Formosa the 14,000 metric tons, 5% more or less, of

soybeans it had contracted to sell to China Trade Development Corporation.

The M/S NORMA loaded the No. 2 yellow soybeans on January 4 and 5, 1972 and issued clean on board bills of lading therefor totalling 14,700 metric tons on January 5, 1972. Coincidentally, the Destrehan Board of Trade issued eight (8) official weight certificates for the cargo, totalling 14,700.68 metric tons.

The vessel was loaded by St. John Shipping, Co., Inc. of Reserve, Louisiana, and the stevedoring services were paid by or on behalf of defendant Austin Navigation Corp., Ltd.

The vessel departed the loading port on January 5, 1972 and arrived at Kaohsiung, Formosa on March 2, 1972, her first port of call to discharge cargo.

Discharging at Formosa was commenced on March 28, and completed on April 15, 1972. The method of discharge was by grab-bucket and the cargo was bagged after being dumped loose on the quay. The bags were then weighed.

180,448 bags averaging 176.4 pounds, 161 bags averaging 131.6 pounds and 6 bags averaging 117 pounds,or a total of 180,615 bags, were individually weighed on the pier. The cargo

surveyor found a shortage of 254.23 metric tons based upon bill of lading weight less bagged weight. He also indicated that the shortage would be only 195.72 metric tons if the weight computated on the basis of the arrival and discharged drafts of the NORMA were considered the official outturn weight.

Subsequently two actions were commenced by the plaintiffs, one against Cook Industries sounding in breach of contract of sale and one against the vessel owner sounding in breach of contract of carriage. The vessel owner impleaded Cook in the admiralty action.

Issue was joined and the actions consolidated. Various motions were made by Cook and all were denied by the Court.

ISSUE

IF COOK INDUSTRIES CAN SHOW THAT THE FULL QUANTITY OF CARGO WAS LOADED AT LOUISIANA, DO THE PLAINTIFFS AND DEFENDANT AUSTIN HAVE A CAUSE OF ACTION AGAINST COOK AS A MATTER OF LAW?

It has been stipulated by the parties that weight certificates evidencing the loading on board the NORMA of 14,700.68 metric tons were issued at Reserve, Louisiana. It has been further stipulated that the Chief Weighmaster, if called, would testify as to the validity and accuracy of those certificates, as set forth in his affidavit, annexed hereto as Exhibit A.

The contract of sale (Exhibit 1A) states "weights to govern loading official". The contract further states that the Buyers i.e. plaintiffs, shall be responsible for discharging the vessel. Furthermore, the terms of sale are C & F, Formosa.

The discharging surveyor found that a shortage of 254.23 metric tons was noted after discharge of the vessel by grab-bucket, the bagging of the loose cargo on the pier, and weighing the bags. This shortage ratio (i.e. bill of lading weight less bagged weight divided by bill of lading weight) equals 1.729456%.

The surveyor has also indicated that a loss ratio of only 1.33142% would result using the vessel's draft readings as the standard. The average of the two loss figures is 1.530438%.

Mr. Jack Berg, Vice President of Continental Grain Co., has stated that the normal shrinkage for this type of cargo, on this type of voyage, using grab-bucket (or clamshell) discharge would be in the area of 1.55%. It should be stressed that Mr. Berg was not aware of the actual alleged loss when making his report. It would appear that the claimed "loss" was well within the expectable shrinkage allowance.

DISCUSSION

It is uncontested that 14,700 metric tons were loaded aboard the vessel at Reserve.

The contract of sale was made on "C & F, Formosa" terms. In the normal commercial usage of this term, the buyer bears all risks of the goods from the time when they shall have effectively passed the ship's rail at the port of shipment. See UCC Section 2-320 and official comment. The term is only reinforced by the requirement in the sales contract that the discharge costs be for the account of the buyers. It is further reinforced in the charter party, clause 10, which requires receivers' stevedores to discharge the vessel free of risk and expense to the vessel.

Assuming arguendo that the alleged loss exists there are only three possible points at which the loss could have occurred:

1. Prior to loading
2. After loading
3. During or after discharge

A.) If Cook did not furnish to Austin the requisite amount of grain, then it will be conceded that Cook is liable for the loss and would have a claim on Austin for freight.

It is, however uncontested that 14,700.68 metric tons of grain was loaded aboard the vessel, at which time risk of

loss passed to the plaintiffs.

B.) If the grain was lost between loading and arrival in Formosa, then under the terms of the sales contract, the plaintiffs must bear the loss vis a vis Cook but might have a claim against Austin for breach of the contract of carriage.

It appears, however that the vessel went directly from Louisiana to Formosa and that all holds were certified clean after discharge by the plaintiffs' surveyor.

C.) If the grain was lost during or after discharge, then clearly the loss would be for the account of the plaintiff buyers who might have a claim over against their stevedores.

SUMMATION

It has not even been alleged that Cook failed to furnish to Austin the contractually required amount of soybeans nor is it contested that the NORMA loaded anything less than 14,700 metric tons of soybeans.

CONCLUSION

The complaint and the third-party complaint should be dismissed as against Cook Industries Inc.

Respectfully Submitted,

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN

Frederick W. Meeker

Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SHUI FA OIL MILL CO. LTD., et al.,

Plaintiffs,

-against-

M/S "NORMA", her engines, etc.

-and-

AUSTIN NAVIGATION CORP. LTD.,

Defendant and Third-Party Plaintiff,

-against-

COOK INDUSTRIES INC.,

Third-Party Defendant.

73 Civ. 250 (CES)

AFFIDAVIT

- X

STATE OF LOUISIANA)
: SS.:
PARISH OF ST. JOHN THE BAPTIST)

DANIEL X. WILLIS, being duly sworn deposes and says:

1. That he is the Chief Weighmaster of the Destrehan Board of Trade, a non-profit, official inspection agency licensed by the United States Department of Agriculture to certify quantity and quality of bulk grain cargo for export and domestic shipments from the port of Reserve, Louisiana, and that he makes this affidavit based upon personal knowledge.

2. I have been a licensed weigher for the past 15 years and I am now employed as chief weighmaster of the Destrehan Board of Trade.

3. At the time of the loading of the M.V. Norma

on January 4th and 5th, 1972, I personally supervised the weight certification of the loading from grain elevators and can state that an official licensed weigher of Destrehan was at all times on hand to ensure the correctness of the weight certifications.

4. The scales used in weighing the cargo as discharged from the elevators had at that time been certified by both the State of Louisiana and various other private concerns as accurate within acceptable limits for weighing bulk grain.

5. It is my personal belief that the weight certificates for soybean cargo loaded aboard the M.V. Norma dated January 5, 1972 and numbered 619-1 through 619-8 inclusive, accurately reflect the true amount of grain loaded aboard that vessel.

Daniel K. Willis

Sworn to before me
this 31 day of January, 1974.

Notary Public

DECISION OF JUDGE STEWART

(pp. 445a-450a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD. and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

M/S "NORMA", her engines, boilers, etc.,

-and against-

AUSTIN NAVIGATION CORP. LTD.,

Defendant.

73 Civ. 250

Counsel
FOR PLAINTIFF
DANIEL SULLIVAN;
BIGHAM, ENGLAR, JONES + HOUSTON
FOR DEFT AUSTIN
PETER ZAMBITO; DOUGHERTY RYAN MAHONEY PELLEGRINO + GIGUERA
FOR DEFT COOK
EW MECKER; HILL, RIVKINS CAREY LOESBERG + O'BRIEN

SHUI FA OIL MILL CO. LTD., HUEY FENG OIL MILL CO. LTD., HUI SHUNG SOLVENT OIL CO., HSIE CHENG OIL MILL CORP., HENG LUNG OIL MILL CO. LTD., YUAN YI OIL INDUSTRY CO. LTD., KING TAI IH OIL FACTORY CO. LTD., and KING TAI YI TRADING CO. LTD.,

Plaintiffs,

-against-

COOK INDUSTRIES, INC.,

Defendant.

73 Civ. 251

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

Plaintiffs, Shui Fa Oil Mill Co. Ltd., Huey Feng Oil Mill Co. Ltd., Hui Shung Solvent Oil Co., Hsie Cheng Oil Mill Corp., Heng Lung Oil Mill Co. Ltd., Yuan Yi Oil Industry Co. Ltd., King Tai Ih Oil Factory Co. Ltd. and King Tai Yi Trading Co. Ltd. ("Shui Fa") have brought suit against the M/S

"Norma" and its owner, Austin Navigation Corp. Ltd. ("Austin"), alleging that defendant Austin is liable to plaintiffs for breach of its contract for carriage. Shui Fa alleges that it had contracted with Austin for delivery of soybeans and that the shipment was 254 metric tons short.[1/] Shui Fa has brought a separate action for breach of contract against Cook Industries, Inc. ("Cook"), who sold the soybeans and arranged the charter for the shipment, claiming that Cook failed to load the proper quantity of goods. Finally, Austin has brought a third party complaint against Cook, alleging that, if Austin is liable to Shui Fa, then Cook must indemnify Austin. The two actions, consolidated for all purposes by court order on December 7, 1973, have been submitted to the court on a stipulated record.

In November of 1971, Cook contracted with the China Trade and Development Corporation, acting on behalf of the plaintiffs, to sell and to arrange to ship yellow soybeans. Plaintiffs bought 14,000 metric tons of soybeans, with a "leeway factor" of 5%; thus, Cook was authorized to ship from 13,300 to 14,700 metric tons of soybeans. Exhibit 1-A, Stipulation of Facts.[2/] On December 16, 1971, Cook entered into a space charter

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1/ The value of the loss is claimed to be $32,452.46. Stipulation of Facts, ¶20.

2/ All exhibits, unless otherwise indicated, are attached to the Stipulation of Facts.

with Austin to have Austin transport the cargo aboard the M/S Norma. Exhibit 3. A bill of lading, certifying receipt of 14,700 metric tons of soybeans was issued by Austin's agent. Exhibit 4 and 5. Weight Certificates totalling 14,700.68 metric tons were issued by the Destrehan Board of Trade at Reserve, Louisiana.[3/] Exhibits 6-A through 6-H. The Norma sailed from Reserve, Louisiana and went directly to Kaohsiung, Taiwan, where it discharged the cargo. A surveyor, employed by plaintiffs, watched the discharge and supervised the sweeping of the holds. Stipulation of Facts, ¶14-16. The cargo was weighed immediately and found to be short the 254 metric tons which are at issue here.

The issue before us is which of these parties bears the risk of loss for the shortage of soybeans. The United States Carriage of Goods by Sea Act, 46 U.S.C. §1300 et seq. ("COGSA") governs the liabilities of the parties.[4/] Under COGSA, "...a shipper makes out a prima facie case by proving that

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3/ The accuracy of the Destrehan port scales and of the weight certificates is attested to by Daniel Willis, Chief Weighmaster of the Destrehan Board of Trades, who personally supervised the weighing of the soybeans. Exhibit 7. His affidavit provides sufficient foundation to find that the certificates fall within the "business records" exception to the hearsay rule and are admissible as evidence. Compare J. Howard Smith, Inc. v. S.S. Maranon, 501 F.2d 1275 (2d Cir. 1974), cert. denied 420 U.S. 975 (1975).

4/ COGSA applies to the "carriage of goods by sea to or from ports of the United States in foreign trade." 46 U.S.C. §1300. In addition, the bill of lading states that it is effective "subject to the provisions of the Carriage of Goods by Sea Act...which shall be deemed to be incorporated herein...." Exhibit 5, ¶1.

his goods were delivered to the carrier in good condition and were outturned damaged or not at all; the burden then falls upon the carrier to bring itself within an excepted cause to prove it exercised due diligence to avoid and prevent the harm...." Lekas & Drivas, Inc. v. Goulandris, 306 F.2d 426, 429 (2d Cir. 1962) (citations omitted). See also Yawata Iron & Steel Co., Ltd. v. Anthony Shipping Co., Ltd., 396 F. Supp. 619, 621 (S.D.N.Y. 1975). Here, defendant Cook, who arranged for the shipment of the goods, has shown by the bill of lading issued by Austin and by the weight certificates that it [Cook] delivered the full contract amount of soybeans to the carrier. Kupfermann v. United States, 227 F.2d 348, 350 (2d Cir. 1955).[5/] Plaintiffs have offered nothing to dispute the validity of these documents. Thus, plaintiffs' charge that Cook breached its contract for failure to deliver the full amount must fail and plaintiffs' complaint against Cook is dismissed.

As it has been established that the shipper made proper delivery, the burden of proof shifts to the carrier to

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5/ The contract between plaintiffs and Cook also specified "C & F Buyer", [Exhibit 1-A], which indicates that the risk of loss in transit shifted to the buyer when the goods were received by the carrier. See Gilmore and Black, The Law of Admiralty, 2d ed. 1975 §3-7. See also Uniform Commercial Code ("UCC") §2-320.

establish that it is not liable for the loss because the loss is attributable to a cause which is listed under 46 U.S.C. §1304(2). See Yawata Iron & Steel Co., supra, California & Hawaiian Shipping Co. v. Columbia S.S. Co., Inc., 391 F. Supp. 894 (E.D. La. 1972), aff'd 510 F.2d 542 (5th Cir. 1975), and Gilmore & Black, The Law of Admiralty, 2d ed. 1975 §3-43. Austin alleges that the shortage of soybeans is due to "natural shrinkage," an event which falls within a carrier's statutory exculpation from liability under COGSA, 46 U.S.C. §1304(2)(m).[6/] In support of this contention, Austin offers the opinion letter of Jack Berg, Vice President of Continental Grain Company. Berg states that, given the method of shipment and of discharge and the nature of the commodity shipped, "normal shrinkage...should be 1.55%, equivalent to 227.85 metric tons." Exhibit 10. Further, plaintiffs' answers to interrogatories indicate that, for the three year period prior to the voyage in suit, plaintiffs suffered losses in soybean shipments which ranged from .225% to 2.62816%. Exhibit 9. Given that the loss at issue here is 1.72945%,[7/] only "slightly in excess" of the percentage stated by Berg to be normative (Memorandum of Law, p. 5) and that the

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6/ 46 U.S.C. §1304(2)(m) states "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from...Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods."

7/ See plaintiffs' surveyor report, Exhibit 8.

loss of weight is not an unusual occurrence in the shipment of soybeans, Austin argues that the loss is due to an inherent quality of the beans and Austin should not be held responsible.

Plaintiffs have not submitted any evidence to rebut Austin's allegations that the loss was due to natural shrinkage. Further, plaintiffs have not alleged that Austin was negligent in its transport or failed to discharge all cargo on board. We find Austin's evidence that the loss was attributable to natural qualities of the goods to be credible and we find that Austin has met its burden of showing that it is not liable for the damage. 46 U.S.C. §1304(2)(m). Plaintiffs, failing to offer any evidence on Austin's activities, have not met their burden of showing that any of Austin's actions were a concurrent cause of the loss [See Yawata Iron & Steel Co., supra, and Lekas & Drivas, supra]. Therefore, we find Austin is not liable to plaintiffs for the shortage. Plaintiffs' complaint against Austin is dismissed; Austin's third-party complaint against Cook is also dismissed.

SO ORDERED.

Charles L. Brieant
United States District Judge

Dated: New York, N. Y.
February 20, 1976.